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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1208/2014 (CS(COMM) 206/2016)**

AAA BRAZIL OFFSHORE MARTIMA LTDA Plaintiff

Through **Mr. Prateek Kumar Srivastava and
Mr. Sushant Kumar, Advocates**

versus

ARINA OFFSHORE (JLT) AND ORS Defendants

Through **Mr. Subhankar Jha and Mr. Chander
Shekhar, Advocates for defendant
no.2
Ms. Madhavi Khare and Mr. Saurabh
D. Karan Singh, Advocates for
defendant no.4**

CORAM:

**SH. ANIL KUMAR SISODIA (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

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02.06.2016

IA No. 25443/2015

1. Defendant no.2 has filed this application for condonation of delay of 103 days in filing written statement.
2. In the application, it has been stated that vide order dated 11.03.2015 the Hon'ble Court had directed to defendant no.2 to file the written statement to the amended plaint within two weeks. Ld. counsel for defendant no.2 sought instructions from his client who is based in

Mumbai and after the receipt of the information from the counsel, defendant no.2 started collecting the information and documents and has different officials of defendant no.2 had handled the transactions at different times, it took some time to collect the entire information. After collecting the information, defendant no.2 filed an application u/S 8 of The Arbitration and Conciliation Act before filing the written statement on 30.06.2015. It was also stated that written statement was prepared by ld. counsel for defendant no.2 and send to defendant no.2 to Mumbai for approval and signatures. The supporting affidavit was got attested at Mumbai on 22.06.2015 and written statement was filed on 30.06.2015. A prayer has been made for condonation of delay of 103 days in filing the written statement.

3. Plaintiff has filed reply to the application raising preliminary objections that the application is liable to be dismissed, as it has not been filed under the relevant provision of CPC. At the time of institution of the suit, applicant was served twice, but defendant no.2 did not bother to appear and after the period of 11 months, defendant no.2 appeared before the court and demanded copy of the plaint which has already been served on it. The conduct of defendant no.2 is highly lackadaisical and only aims at delaying the proceedings of the suits. On 09.04.2015, defendant no.2 had admitted before the Hon'ble Court that copy of the amended plaint had been supplied and defendant no.2 was given 35 days time to file the amended written

statement, but the same has been filed on 30.06.2015 without filing application for condonation of delay. On 08.07.2015, defendant no.2 was granted two weeks time to file application for condonation of delay, but the same was not complied with and on 28.10.2015 again time of two weeks was granted to file the application for condonation of delay which expired on 11.11.2015 and the application was filed on 14.12.2015. The applicant thus only wants to delay the matter and the application is liable to be dismissed. On merits the contents of the application have been denied.

4. I have heard ld. counsel for plaintiff as well as ld. counsel for defendant no.2 and have perused the record carefully.
5. The contention of ld. counsel for plaintiff that application is liable to be dismissed as it has not been filed under relevant provisions of law is without any merits. The court has to look into the substance of the application and mere omission/wrong mentioning of the sections cannot be made a ground for dismissal of the application. The application is accordingly treated to have been filed u/O 8 Rule 1 CPC.
6. It is now well settled that the object of Order 8 Rule 1 CPC is to complete the pleadings expeditiously and the provision is directory in nature. The courts have power to condone the delay even beyond the period of 90 days.

7. In the present case, the application of the plaintiff for amendment of the plaint was allowed on 28.01.2015. On 11.03.2015, ld. counsel for defendant no.2 has appeared and submitted that he had not received the complete plaint. On the submissions made by ld. counsel for plaintiff that there were no changes in the body of the plaint except the prayer clause, defendant no.2 was directed to file the written statement within two weeks. On 07.04.2015, ld. counsel for defendant no.2 again submitted that he had not received the complete amended plaint and page no. 25 was missing. Copy of the amended plaint supplied to defendant no.2 in the court itself and defendant no.2 was directed to file the written statement within 30 days by the Hon'ble Court on 09.04.2015. The written statement in the present suit has been filed only on 30.06.2015 which is beyond the period of 30 days from 09.04.2015, but is within the extended period of 90 days. Hence, in view of the reasons given in the application and also keeping in view the fact that object of Order 8 Rule 1 is not to scuttle the defense of the defendants, but to expedite the completion of pleadings, the delay in filing of written statement is condoned, subject to the cost of Rs. 15,000/- to be paid by defendant no.2 to the plaintiff within four weeks from today.

IA stands disposed off accordingly.

CS(OS) 1208/2014

Subject to the payment of cost as stated above, written statement of defendant no.2 is taken on record.

Plaintiff shall file replication to the written statement of defendant no.2 within six weeks from today.

Parties are directed to file their original documents within eight weeks from today after exchanging copies.

Affidavit of admission/denial of documents be filed within ten weeks from today after exchanging copies.

Put up for completion of pleadings and admission/denial of documents on **20th September, 2016.**

ANIL KUMAR SISODIA (DHJS)
JOINT REGISTRAR (JUDICIAL)

JUNE 02, 2016
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