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

+ **CS(OS) 2921/2012**

NIDHI GOEL

..... Plaintiff

Through: Mr. Vidit Gupta, Advocate.

versus

J.M.R INFO TECH INDIA PVT LTD & ORS

..... Defendants

Through: Mr. Deepjyot Singh, Advocate for
defendant Nos.1 and 5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **19.04.2016**

O.A. No.129/2015 (against order dated 26.3.2015)

1. By this O.A., the appellants/defendant nos.1 and 5 challenge the order passed by the Joint Registrar on 26.3.2015 whereby the Joint Registrar has declined to condone the delay of 225 days in filing of the written statement by the appellants/defendant nos.1 and 5.

2. The subject suit is a suit filed by the plaintiff as an ex-employee of the defendant no.1-company claiming Rs.21 lacs with interest on the ground of misrepresentations of the defendants with respect to the job offered to the plaintiff and also of the plaintiff being harassed on account of non-release of the passport and consequent litigation before the court in

Kerala.

3. Paras 21 and 22 of the plaint encapsulate the cause of action pleaded by the plaintiff and which paras 21 and 22 of the plaint read as under:-

“21. That it is crystal clear from the events narrated hereinabove and also from the documents, that the Plaintiff has suffered/is suffering huge financial losses, social stigma and mental torture and agony because of the illegal acts of the Defendants acted in connivance and conspiracy with each other. The Plaintiff has suffered/is suffering monetary as well as non-pecuniary loss in terms of loss of time, inconvenience, mental agony, trauma, humiliation and harassment.

22. That the Plaintiff is thus filing the present suit against the Defendants to recover damages to a tune of Rs.21,00,000/- along with interest pendent-lite and future and costs; which is broadly estimated as under:-

A.	Loss of Principal amount/last drawn salary from the previous employer on account of not giving 2 months notice; on assurances given by the Defdt no.1-8.	Rs.39,045.00
B.	Salary for April, 2011	Rs.57,000.00
C.	Amounts spent on account of Air Ticketing to travel from Delhi to Bangalore & back	Rs.15,000.00
D.	Amounts spent on account of visiting District Courts & High Courts at Kerala	Rs.88,955.00
E.	Compensation for mental agony & torture	Rs.17,00,000.00
F.	Cost of litigation	Rs.2,00,000.00
	Total	Rs.21,00,000.00

4. As per the record, defendant nos.1 and 5 for the first time appeared through counsel on 8.11.2013. For 8.11.2013, summons were issued to the defendant nos.1 to 5 vide order dated 30.5.2013. On the defendant nos.1 to 5 appearing on 8.11.2013, no specific time was granted for filing of the written statement but the subsequent order dated 18.3.2014 notes that the written statement is not filed by defendant nos.1 and 5 in spite of opportunities granted. The orders dated 30.5.2013, 8.11.2013 and 18.3.2014 read as under:-

“Order dated 30.5.2013

Summons sent to defendant Nos.1 to 5 have not returned while summons sent to defendant No.6 have returned unserved.

Fresh summons, through all modes including e-mail, be issued to all the defendants, returnable on 8th November, 2013.

Order dated 8.11.2013

Defendant Nos.1 to 5 were duly served with the summons on 09.07.2013 but have not filed the written statement till date. Even learned counsel appearing today specifically submits that he represents only defendant Nos.1 and 5.

Summons sent to defendant no.6 have returned un-served. Fresh summons be issued against defendant no.6, returnable on 18.03.2014.

Order dated 18.3.2014

Written statement not filed on behalf of defendants no.1 and 5 despite opportunities given.

None on behalf of defendants no.2,3 and 4. Their right to file written statement stands closed.

Summons issued to defendant no.6 received back unserved with the report 'not found'.

Summons be issued to defendant no.6 on fresh PF through all means of communication allowed as per CPC, returnable on 12.08.2014.”

5.(i) The defendant nos.1 and 5 filed the written statement on 16.4.2014 and condonation of delay of about 225 days is sought on the ground that documents supplied by the plaintiff were not complete and the documents were received by the defendant nos.1 and 5 through the counsel for the plaintiff ultimately only on 27.3.2014. Illness and surgery of defendant no.5, who is the Manager of defendant no.1, is also pleaded as one of the grounds for condonation of delay.

(ii) Condonation of delay is vehemently opposed on behalf of the plaintiff by arguing that actually defendant nos.1 and 5 were served firstly for 30.5.2013 through court process server though not so recorded in the order dated 30.5.2013. It is also argued that defendant nos.1 and 5 were also served through e-mail dated 27.4.2013 for 30.5.2013. It is argued that there is no valid explanation given for condonation of delay and therefore the delay of around 225 days beyond 90 days prescribed for filing of the written

statement should not be condoned. It is also argued by the plaintiff that defendant nos.1 and 5 have filed no proof that they received documents from the plaintiff's counsel only on 27.3.2014 and which is a false stand because the orders dated 8.11.2013 and 18.3.2014 do not record any statement of defendant nos.1 and 5 that they need documents from the plaintiff.

6. In my opinion, though there can be said to be some amount of negligence on behalf of defendant nos.1 and 5 in filing of the written statement, however, considering the facts of the present case and the cause of action as pleaded by the plaintiff, interest of justice requires that the written statement of defendant nos.1 and 5 be taken on record. It is also noted that all the defendants in the suit including defendant nos.1 and 5, are situated not at Delhi but at Calicut in Kerala. As per Order IX Rule 6(1)(c) of the Code of Civil Procedure, 1908 (CPC), summons are validly served only if there is sufficient time to enable the defendants to appear on the date fixed. Service therefore of defendant nos.1 and 5 on 21.5.2013 for appearance on 30.5.2013, with the defendant nos.1 and 5 being situated in Calicut, Kerala, cannot be said to be due service because of lack of sufficient time for engaging an Advocate and appearing through an Advocate at Delhi. In any case, two views can be taken of the matter and therefore a liberal

view has to be taken in favour of the defendants because the question is of closing of a substantive right to file the written statement.

7. So far as the e-mail dated 27.4.2013 of the plaintiff to the defendant nos.1 and 5 is concerned, the said service is no service in the eyes of law for various reasons. Firstly, there was no specific order passed on 7.3.2013 for service by e-mail as was done by the subsequent order dated 30.5.2013. Secondly, the fact that plaintiff did not file any affidavit of service of defendant nos. 1 and 5 that defendant nos. 1 and 5 have been served by e-mail dated 27.4.2013 for 30.5.2013 is a clear indication that plaintiff was not ordered to serve the defendant nos. 1 and 5 by e-mail for 30.5.2013. Thirdly, even assuming that there was an order for service of defendant nos. 1 and 5 by e-mail for 30.5.2013, the plaintiff itself did not plead on 30.5.2013 that defendant nos. 1 and 5 have been served for 30.5.2013 by e-mail on 27.4.2013 as such claim of service of defendant nos. 1 and 5 by e-mail dated 27.4.2013 for 30.5.2013 is not recorded in the order dated 30.5.2013. Fourthly, simply filing a photocopy of dispatch by e-mail cannot be taken as a conclusive proof of service by e-mail because there is no certificate of service provider of the e-mail being sent and received by defendant nos. 1 and 5.

8. Therefore, service on the defendant nos.1 and 5 is really for the first time only on 8.11.2013. No time was given by the Joint Registrar on 8.11.2013 for filing of the written statement and there was no extension of time granted for filing of written statement. In spite of this being the factual position, the Joint Registrar by the order dated 18.3.2014 records that 'in spite of opportunities given' defendant nos.1 and 5 have not filed the written statement.

9. Also, I find some amount of strength in the case of defendant nos.1 and 5 that they did not receive the documents from the plaintiff till 27.3.2014 inasmuch as certain procedural aspects are done between counsels without taking proof of service on minor issues such as of receipt of the documents. It is noted in this regard that even when defendants were served for 30.5.2013, summons record that the defendant no.1 was only served with the summons and the plaint copy i.e not with the documents filed along with the suit.

10. Taking therefore a holistic view of the matter, and CPC being handmaid of justice, and with the fact that delay in filing of the written statement is of about 7 ½ months and delay does not run into over a year, this O.A. is allowed by taking the written statement of the defendant nos.1

and 5 on record by setting aside the order of the Joint Registrar dated 26.3.2015, but subject to payment of costs of Rs.15,000/- to the plaintiff.

O.A. is allowed and disposed of accordingly.

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11. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge (East), Karkardooma Courts, Delhi.

12. Let parties appear before the District & Sessions Judge (East), Karkardooma Courts, Delhi on 24rd May, 2016. Suit file be made available to the District & Sessions Judge (East), Karkardooma Courts, Delhi on the date fixed.

VALMIKI J. MEHTA, J

APRIL 19, 2016

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