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

+ **CS(OS) 2797/2011**

KESHAV SUD

..... Plaintiff

Through Mr Mukesh Kr Verma, Advocate.

versus

ANSALS BUILDWELL LTD. & ORS.

..... Defendants

Through Mr Gurmehar Sistani and Mr Samit Khosla, Advocate for D-1.

Ms Swati Gupta, Advocate for

Mr Tanmaya Mehta, Advocate for D-2 and D-6.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.08.2016

OA No. 150/2013

1. This is an appeal filed under Rule 4, Chapter-II of the Delhi High Court (Original Side) Rules, 1967 against the order dated 16.07.2013 (hereafter 'the impugned order') passed by the Joint Registrar whereby the defendant's right to file the written statement had been closed.

2. On 16.07.2013, the proxy counsel appearing for defendant No.1 (appellant herein) had requested further time to file the written statement which was objected to by the plaintiff as it was stated that the plaint was served on the defendants in November, 2011 and the time for filing the written statement had long elapsed. The learned Joint Registrar passed the impugned order in the aforesaid context.

3. The learned counsel appearing for the appellant points out that on the

said date, the learned counsel for appellant had not appeared and the proxy counsel appearing for appellant did not point out that appellant had already filed its written statement on 20.03.2012, although, the same was under objections. He further states that written statements filed by other defendants - which were also filed belatedly - have been taken on record on payment of costs.

4. The learned counsel appearing for the plaintiff submits that although the diary number indicates that a written statement was filed on 20.03.2012, it was not supported by an affidavit of that date and thus could not be considered as a written statement in the eyes of law. He further states that the no formal application seeking condonation of delay in filing the written statement was also filed.

5. Be that as it may, the fact is that the appellant had much prior to 16.07.2013 taken steps to file the written statement which, however, could not be brought on record on account of certain defects. And, this material fact was not brought to the notice of the Learned Joint Registrar.

6. Indisputably, appellant has been lax in filing the written statement; however, given the fact that written statements of other defendants have been taken on record and the written statement of the appellant supports the defence already taken, it would not prejudice the plaintiff if the appellant is also permitted to file its written statement. In my view, it would be meet the ends of justice if appellant is permitted to file the written statement on record, *albeit*, on payment of costs.

7. Accordingly, the appeal is allowed and the impugned order is set

aside. The appellant may file its written statement within a period of one week from today subject to payment of cost of ₹25,000/- to the plaintiff.

8. The appeal is disposed of.

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9. The suit be transferred to the Court of the Learned District & Sessions Judge, (Central District), Patiala House, Delhi.

10. The parties shall appear before concerned District Judge on 06.10.2016.

AUGUST 17, 2016
pkv

VIBHU BAKHRU, J