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

+ C.R.P. 123/2016

M/S EXCITING FASHION & EMB (P) LTD & ORS..... Petitioner
Through Mr.A.K.Goyal, Adv.

versus

M/S KM POLY-YARN (P) LTD Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.08.2016

1. By the present petition the petitioner seeks to impugn the order dated 15.3.2016 by which the application of the petitioner under Order 8 Rule 1 CPC placing on record the written statement was dismissed with costs of Rs.15,000/-.

2. The petitioner/defendants were served on 14.8.2015. Written statement has been filed on 17.11.2015 i.e. within 94 days from the date of service of the notice. The petitioner moved an application under Order 8 Rule 1 CPC where it was pointed out that the summons which were received were handed over to defendant No.3/petitioner No.3 who handed it over to an employee of the appellant company, namely, Mr.Anubhav Kohli for handing over the same to the counsel. It appears that the employee did not deliver the papers. The employee subsequently left the employment of the company. Subsequently, the appellant realised that the employee had not delivered the papers to the counsel for the defendant and hence there was a delay in filing the application. No reply was filed by the respondents to this application.

3. The trial court noted that no document has been placed on record by the defendant to show whether the employee in question ever existed on the payrolls of defendant No.1 or has left the service of defendant No.1. It was further concluded that the advocate to whom the papers were to be handed over is described in the application as “panel counsel”. Hence, being a panel the defendants would be in constant touch with the counsel and it was difficult to believe that the defendants would not contact the panel counsel for a period of almost two months. It was also noted that the written statement bears the date of 16.11.2015 whereas in the application it is stated that the written statement was finalised on 10.11.2015. Hence, the trial court concluded that the petitioners/defendants have not shown sufficient cause for the delay in filing the written statement.

4. Learned counsel for the petitioner submits that the reason for delay is bona fide and genuine. He submits that the narration of facts given in the application filed by the petitioner and sequence of events stated for delayed filing of written statement are bona fide and genuine. He also submits that the petitioner has not taken any adjournment and the summons that were received were returnable only for 17.11.2015 when the written statement was filed on the first hearing itself. He further submits that defendants No.2 and 3 were not personally served and yet a written statement has been filed on their behalf.

5. An advance copy of the petition has been sent to respondent by speed post but none is present for the respondent.

6. The proviso to order 8 rule 1 CPC provides that when a defendant fails to file written statement within 30 days he will be allowed to do the same on such other day for reasons to be recorded in writing but not later

than 90 days.

7. There are few facts which need to be seen. Written statement has been filed without taking any adjournment from the court. There is a delay of only four days beyond the period of 90 days in filing the written statement. An explanation has been given as to why the delay took place which is duly supported by the affidavit of defendant No.3/Director of petitioner No.1. There is no reply filed by the respondent meaning thereby that the averments on oath which have been stated by the petitioners have not been refuted by the respondents. In the absence of anything to the contrary, prima facie the averments of the petitioner appears to be correct.

8. It is settled legal position that “rules of procedure is the handmaid of justice”.

9. In my opinion, it would be appropriate that the petitioner may approach the trial court with an application for review of the impugned order dated 15.3.2016.

10. Keeping in view the circumstances stated above, the order dated 15.3.2016 is modified and the costs imposed on the petitioner are waived.

11. In case the petitioners file an application for review of the said order within two weeks from today the trial court is requested to consider the same as per law.

12. Petition stands disposed of.

13. Dasti.

JAYANT NATH, J

AUGUST 12, 2016

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