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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 858/2016 & C.M. No.31992/2016 (for stay)
KANISHK ARORA Petitioner
Through: Mr. H.K. Raini, Advocate.

versus

KM POLY-YARN (P) LTD (DELHI) Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **02.09.2016**

1. By the present petition, the petitioner seeks to challenge the order dated 28.4.2016 by virtue of which the application filed by the petitioner/defendant No.1 under Order VIII Rule 1 CPC for condonation of delay of 16 days in filing the written statement was dismissed.
2. As per the aforesaid application filed by the petitioner/defendant No.1, he was served on 14.8.2015. On 18.8.2015, the plaint was handed over to the counsel, who required certain documents which were provided on 26.8.2015. On receipt of the written statement, the petitioner informed the counsel that he would come to Delhi on 10.9.2015 as he stays in Amritsar. However, the petitioner could not come to Delhi because he was

suffering from Typhoid and hence delay of 16 days took place in filing the written statement.

3. The trial court went into a detailed inquiry to determine as to whether good/sufficient cause has been shown in not filing the written statement within the time prescribed. On a detailed inquiry, it reached a conclusion that the affidavit in support of the application is attested not by the Oath Commissioner but by the Notary Public. It also noted that though the petitioner claimed to be suffering from Typhoid but not even a single document has been placed on record in this regard. It also noted that *vakalatnama* executed by the petitioner had the date of 18.9.2015. Hence it concluded that if *vakalatnama* could be signed, there is no reason as to why written statement could not be signed on 18.9.2015. Holding that there is no good/sufficient cause for the delay in filing the written statement, the application was dismissed.

4. I may note that the order VIII Rule 1 CPC does not use the phrase 'good cause/sufficient cause'. It only provides that when there is a delay beyond 30 days in filing the written statement, the defendant may be allowed to file the same for reasons to be recorded in writing.

5. The defence of the petitioner could not be knocked out on highly technical and strict interpretation of the provision of law. No evidence is normally to be led to show as to why the petitioner was not able to file the written statement within the stipulated period of 30 days. There is a delay of 16 days in filing the written statement.

The petitioner is based in Amritsar. On oath she has said that she had typhoid. Normally, such an averment in the facts would suffice.

6. Despite an advance copy of the petition having been sent to the learned counsel for the respondent by speed post, none is present for the respondent. Accordingly, the impugned order is quashed and the application of the petitioner is allowed. Written statement which is said to have been filed may be taken on record.

7. In view of the above directions, the petition stands disposed of.

JAYANT NATH, J.

SEPTEMBER 02, 2016
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