

\$~13.

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

+ CS(OS) 1190/2015

IDI DESIGNS PVT LTD Plaintiff

Through: Mr. Kailash Chandra, Advocate

versus

STERLING VEHICLE AND GENERAL SALES PVT LTD

..... Defendant

Through: Ms. Shanta Pandey and Mr. Hiren
Dasan, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

14.01.2016

%

OA No.15/2016, OA No.500/2015, I.A. No.615-16/2016

I am proceeding to dispose of the aforesaid chamber appeals and the application seeking condonation of delay in filing the written statement by this order. The learned Joint Registrar vide order dated 12.10.2015 closed the right of the defendant to file the written statement on account of the fact that the defendant had been served on 19.05.2015, 20.05.2015 and 01.06.2015.

OA No.15/2016 has been preferred in respect of the said order dated 12.10.2015. The defendant thereafter moved an application to seek condonation of delay of 72 days in filing the written statement. However, the said application was dismissed by the Joint Registrar on 23.11.2015 by observing that the right to file the written statement had already been closed. Consequently, the appellant has preferred the aforesaid chamber appeal

No.500/2015. By I.A. No.616/2016, the defendant seeks condonation of 72 days delay in filing the written statement.

At this stage, I may note that the submission of the plaintiff is that the delay is neither 72 nor 75 days, but it is 132 days.

The explanation furnished by the defendant to seek condonation of delay in filing the written statement is as follows:

“5. That there is a delay of 75 days in filing the appeal on behalf of the applicant/defendant. The delay had occasioned on account of the fact that the authorised representative of the defendant company namely Mr. Amit Singh who was dealing with the present matter was suffering from viral fever and was hospitalised for a considerable period. Pursuant to receipt of summons by the defendant, though papers related to the controversy in dispute were handed over to the present advocate, however, most of the documents/information necessitating the drafting of the written statement were not made available to the present advocate. After recovering from the illness, authorised representative of the defendant company handed over the documents/information as sought for by the present advocate. Moreover, much clarifications/ deliberations were also required in the matter and since the Managing Director of the defendant company was out of country, as such, discussions for finalisation of written statement could not be held within the stipulated period.

6. That pursuant to the return of the Managing Director from abroad, detailed discussions were held in the office of the present advocate along with the authorised representative of the company and subsequently, the written statement was prepared and was handed over to the Clerk of the present advocate to file the same in the Registry of this Hon'ble Court. Inadvertently, clerk of the present advocate misplaced the concerned file and which could be traced out only after some period. Subsequently, when the matter was taken up on 12.10.2015 for the first time pursuant to receipt of summons, counsel for the defendant company appeared before the Id.

Registrar and sought permission to file the written statement. However, the ld. Registrar of this Hon'ble Court refused to accept the same and posted the matter for consideration before the Hon'ble Court for 11.01.2016. Though a copy of the written statement was proposed to be handed over to the counsel for the plaintiff, however, counsel for the plaintiff also refused to accept the same. In fact, counsel for the plaintiff was trying to take advantage of the delay in filing written statement from the part of the defendant”.

I am satisfied that the aforesaid is a sufficient justification to seek condonation of delay in filing the written statement. Accordingly, the appeal and the applications are allowed. The delay in filing the written statement is condoned.

The defendant shall re-file the written statement which is lying under objections within a week. The plaintiff may file the replication within four weeks.

CS(OS) 1190/2015

In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge, Patiala House Courts for further proceedings before the competent court on 18.04.2016.

It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

VIPIN SANGHI, J

JANUARY 14, 2016 sr