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

+ CM(M) 594/2016

M/S ASHISH POLYCOATS PVT LTD & ANR..... Petitioner

Through Mr.Sunil Kumar Mund and

Mr.Amarnath Jaiswal, Advocates

versus

M/S EVEREST FABRICS

..... Respondent

Through Mr.Ayush Sharma and Ms.Nupur

Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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15.02.2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 7.4.2016 by which the right of the petitioner/defendant to file written statement was closed.
2. The admitted position is that the petitioner/defendant was served on 21.01.2016. He has filed his written statement on 22.4.2016 i.e. within 88 days after service on 21.1.2016 on the petitioner. When the matter was listed in court on 30.1.2016 and on 15.3.106, it appears that none appeared for the petitioner. The case was listed on 7.4.2016. The trial court noting that more than two months have elapsed, closed the right of the petitioner to file the written statement.
3. Alongwith the written statement, the petitioner has filed an application seeking condonation of delay in filing of the written statement. The trial court by its order dated 22.4.2016 noted about filing of the written statement but did not take it on record. There has been no adjudication on the application.

4. I have heard learned counsel for the parties. Learned counsel for the respondent has pointed out about default on the part of the respondent in not appearing before the trial court on 30.1.2016 and on 15.3.2016.

5. A perusal of the application filed by the petitioner would show that it has been averred that the defendant No.2/petitioner No.2 is a Director of petitioner No.1. It is stated that he could not appear on 7.4.2016 on account of old age ailments. It is also stated in the application that petitioner No.1 company is a defunct and dormant company. I may also note that the petitioners are based in Balangir, Odisha.

6. In my opinion, the petitioners have shown sufficient cause for the delay of 58 days in filing of the written statement. I accordingly, set aside the order dated 7.4.2016. Subject to payment of costs of Rs.7,500/-, written statement filed before the trial court may be taken on record.

7. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

FEBRUARY 15, 2017

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