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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1000/2017
M/S JAIN TECHNOLOGIES Petitioner
Through: Ms. Akanksha & Mr. Narendra
Prasad Yadav, Advs.
Versus
M/S SALORA INTERNATIONAL LTD Respondent
Through: None.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **12.09.2017**

CM No.33248/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM No.33249/2017 (for condonation of 25 days delay in re-filing the petition)

3. For the reasons stated, the delay is condoned.
4. The application is disposed of.

CM(M) 1000/2017 & CM No.33247/2017 (for stay)

5. This petition under Article 227 of the Constitution of India impugns the order [dated 16th May, 2017 in Civil Suit No.11724/2016 of the Court of Additional District Judge-01 (ADJ) (South-East), Saket Courts, New Delhi] striking off the defence of the petitioner for non-filing of the written statement.
6. The counsel for the petitioner has argued that though the suit from which this petition arises was instituted in the year 2012 but the petitioner was proceeded against *ex parte* in the suit and applied for setting aside of the *ex parte* and which application was allowed on 17th February, 2017 when the

following order was passed:

“Ld. Counsel for plaintiff submitted that he has already filed the reply to the defendant’s application under Order IX rule 7 CPC, however to cut short the further delay, as matter was initially filed in the year 2012, he has no objection if the application is allowed subject to heavy cost.

Considering the submissions and averment of application and in the interest of justice, application of defendant filed under Order IX rule 7 CPC is allowed subject to cost of Rs.10,000/- to be paid to the plaintiff. **WS be filed within stipulated period as per the provisions of CPC with advance copy to other side and after receiving the advance copy of WS, advance copy of replication be also supplied.**

At this stage, Ld. Counsel for both the parties request for referring the matter to mediation to explore the possibility of settlement.

In view of submissions, matter is referred to Mediation Centre, Saket Courts, New Delhi for 04.03.2017 at 10:30 am. Parties to appear there.

Put up on 16.05.2017 to apprise mediation status / filing of WS, replication, admission / denial of documents and for framing of issues.”

7. Admittedly, the written statement was not filed within the stipulated period as per CPC and not even on 16th May, 2017 when the following order was passed:

“Ld. Counsel for defendant submits that matter could not be settled in mediation.

A cheque of Rs.10,000/- of earlier imposed cost paid by the defendant to AR of plaintiff company.

Ld. Counsel for defendant submits that written statement could not be got signed from the defendant which he has prepared and advance copy had not yet been supplied.

On 17.02.2017 defendant was directed to file written statement within stipulated period. Same has not been done. No application has been moved for extension of time for filing written statement. Defence of defendant is struck off.

Put up for plaintiff’s evidence on 14.08.2017. Advance copy of affidavit in evidence be supplied within 15 days to defendant / counsel.”

8. The counsel for the petitioner has argued that written statement was not filed owing to the pendency of mediation.

9. Mediation is not intended to be a dilatory tactic in a suit and if pendency of mediation proceedings without any explicit order suspending

the time for filing the written statement were to be construed as automatically suspending the time for filing of written statement, the parties / counsels would hesitate to agree to mediation, affecting the efficacy thereof. In the present case, there was no order suspending the time for filing the written statement during the pendency of the mediation.

10. Worse still is the conduct of the petitioner / defendant in impugning the order dated 16th May, 2017 after nearly four months therefrom, notwithstanding the suit having been ordered to be listed on 14th August, 2017 for the evidence of the respondent / plaintiff.

11. The counsel for the petitioner / defendant on enquiry states that the respondent / plaintiff led his evidence on 14th August, 2017 and now the suit is listed next on 24th November, 2017 for cross-examination of the witness of the respondent / plaintiff by the petitioner / defendant.

12. It is not understandable that once the defence of the petitioner / defendant has been struck off, why the long date for cross-examination by the petitioner / defendant was given.

13. The counsel for the petitioner / defendant has also argued that in fact the written statement had been prepared before 16th May, 2017 but had not been signed by the proprietor of the petitioner / defendant.

14. If the written statement was ready, the petitioner / defendant in accordance with the judgment in *Sada Ram Vs. Delhi Development Authority* AIR 1979 Del 35 and *Kiddy Palace Vs. State Bank of India* 1997 SCC OnLine P&H 147 even after the order striking off its defence could have applied to the learned ADJ immediately on the next or the following day for taking the written statement on record and for recalling the order of striking off. However nothing of the sort was done and the petitioner /

defendant has waited for four months and has allowed the date fixed for evidence of the respondent / plaintiff to also go by and has preferred this petition also after much delay. The said conduct of the petitioner/defendant clearly shows the dilatory tactics having been practised and which conduct cannot be perpetuated by granting any further indulgence.

13. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 12, 2017

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