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

+ CM(M) No.856/2017.

SANJEEV KUMAR

..... Petitioner

Through: Mr. Gurdeep Singh, Adv.

versus

VINAY RUBBERS & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.08.2017

CM No.28484/2017 (for exemption) and CM No.28485/2017 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) No.856/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 18th May, 2017 in CS No.16041/10 of the Court of Additional District Judge-02 (Central), Delhi) allowing the application of the respondents no.1 to 3 / defendants under Section 5 of the Limitation Act, 1963 and condoning the delay of nearly six years in filing the written statement and taking the written statement on record.

4. I have heard the counsel for the petitioner / plaintiff.

5. The respondents no.1 to 3 / defendants, on services of the summons of the suit, applied under Section 8 of the Arbitration & Conciliation Act, 1996 and which application was dismissed on 10th April, 2012. The respondents no.1 to 3 / defendants, on 9th May, 2012, applied for review of the order dated 10th April, 2012 and which application for review unfortunately also

remained pending for nearly three years till its dismissal on 12th February, 2015. However the suit itself was dismissed in default of appearance of the petitioner / plaintiff on 12th February, 2014; the petitioner / plaintiff applied for restoration of the suit and the suit, vide order dated 2nd March, 2017 was restored to its original position and the written statement along with application for condonation of delay was filed on the same day.

6. The learned Additional District Judge, in the impugned order, has reasoned that since the written statement was filed immediately after restoration of the suit, a case for condonation of delay was made out.

7. The counsel for the petitioner / plaintiff is correct in his contention that the factum of restoration of the suit has nothing to do with the condonation of delay inasmuch as on restoration, the suit has to be restored to the same position in which it was prior to dismissal in default and which position was of the respondents no.1 to 3 / defendants having not filed their written statement within the prescribed time.

8. However on enquiry, it is admitted that there was no order till then, closing the right of the respondents no.1 to 3 / defendants to file the written statement or striking off the defence of the respondents no.1 to 3 / defendants, though it is informed that the application of the petitioner / plaintiff under Order VIII Rule 10 of the CPC was pending consideration.

9. Considering the fact that (a) the application under Section 8 of the Arbitration Act and the application for review of the order of dismissal thereof remained pending for an inordinately long time; (b) the application under Section 8, if had been allowed, would not have required the respondents no.1 to 3 / defendants to file the written statement; (c) no

progress has been made in the suit, inspite of having been instituted seven years ago; and, (d) entertaining this petition and issuing notice thereof will again interfere with progress of the suit, though I am not inclined to interfere with the impugned order but am of the view that the learned Additional District Judge ought to have put the respondents no.1 to 3 / defendants to terms, before condoning the long delay of over six years in filing the written statement.

10. It cannot be lost sight of that Section 8 of the Arbitration Act permits the defendant to file the said application along with the first statement on the substance of the dispute i.e. that the written statement and it is thus not as if mere filing of the application under Section 8 of the Act was a reason enough for the respondents no.1 to 3 / defendants to not file the written statement.

11. I am thus of the view that the learned Additional District Judge, to whom the suit is now assigned or before whom the suit is now pending, to, on the next date of hearing, consider imposition of costs, on the respondents no.1 to 3 / defendants, payable to the petitioner / plaintiff / counsel for the petitioner / plaintiff, keeping in mind the claim in the suit.

12. For issuing the said direction, it is not deemed necessary to issue notice to the respondents no.1 to 3/defendants.

13. The petition is disposed of with direction aforesaid.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2017

‘pp’..