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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1122/2017, CM No.36517/2017 (for stay) and CM
No.36518/2017 (for condonation of 11 days delay in re-filing).
ACEDATA DEVICES PVT LTD. Petitioner

Through: Ms. Savita Prabhakar and Mr. Amit
Bhanot, Advs.

versus

DEEPAK CHHABRA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.10.2017

CM No.36519/2017 (for exemption).

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

**CM(M) 1122/2017, CM No.36517/2017 (for stay) and CM
No.36518/2017 (for condonation of 11 days delay in re-filing).**

3. This petition under Article 227 of the Constitution of India impugns the order (dated 18th July, 2017 in Civ. DJ. No.610948/16 of the Court of Additional District Judge-04, (West) District, Tis Hazari Courts, Delhi) taking off the record the written statement filed by the petitioner / defendant for the reason of same having been filed beyond a period of 90 days and without any application seeking condonation of delay in filing the written statement.

4. The counsel for the petitioner / defendant, in this petition, has purported to give explanation for the conduct aforesaid.

5. I have however enquired from the counsel for the petitioner / defendant as to why the petitioner / defendant did not approach the

Additional District Judge immediately after 18th July, 2017, for condonation of delay in filing the written statement and for taking the written statement on record.

6. The counsel for the petitioner / defendant states that she, on the same date, went with an application to the Additional District Judge but the Additional District Judge refused to entertain the same.

7. The procedure which the counsel for the petitioner / defendant claims to have followed is unknown in law and such statements orally made cannot be believed. There is a procedure prescribed of filing an application and which was admittedly not followed. If an application had indeed been filed, the Additional District Judge would have passed orders thereon.

8. It has been held in *Sada Ram Vs. Delhi Development Authority* AIR 1974 Del 35, *Municipal Committee Kharkhoda Vs. Bhim Singh* ILR (1988) 1 Punjab & Haryana 175 and *Kiddy Palace Vs. State Bank of India* 1997 SCC OnLine P&H 147 that even after the order of striking off of defence, the application for taking the written statement on record, if proper explanation has been given therefor, can be considered by the Court which had struck off the defence.

9. The petitioner / defendant on the other hand has waited for nearly three months to have the said petition listed only shortly before the next date of 22nd November, 2017 before the Suit Court.

10. I have offered to the counsel for the petitioner / defendant that the petitioner / defendant can be granted liberty to approach the Additional District Judge on conditions including of payment of costs of Rs.50,000/- for condoning the delay in filing this petition but the counsel for the petitioner /

defendant is not agreeable.

11. The conduct of the petitioner / defendant of not taking the requisite steps as aforesaid and of filing this petition also belatedly, does not entitle the petitioner / defendant to invoke the equitable jurisdiction, particularly when the petitioner / defendant is also not willing to compensate the respondent / plaintiff for the delay thereby caused.

12. As far back as in *Prem Lata Vs. Rajender Soni* 126 (2006) DLT 168, this Court, relying on *Kailash Vs. Nanhku* (2005) 4 SCC 480 held that extension of time, after 30 days, should not be granted in routine manner, merely for asking. The petitioner/defendant did not even bother to file any application for condonation of delay. I have in judgment dated 2nd August, 2017 in CM(M) No.812/2017 titled *Anil Kumar Goel Vs. Arun Kumar Goel* and in order dated 2nd August, 2017 in CM(M) No.813/2017 titled *Leena Devi vs. Sushil Aggarwal* and in *Centre for Development Communication Vs. JITF Urban Waste Management (Bathinda) Ltd.* 2013 SCC OnLine Del 431 held that because the Courts have not been extending the time prescribed in CPC for filing written statement, the amendment to CPC of 2002 has not had the desired effect till now and time has come for Courts to enforce the same.

Dismissed.

RAJIV SAHAI ENDLAW, J

OCTOBER 11, 2017

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