

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

% **Date of decision: 29th March, 2022.**

+ **CS(OS) 1157/2014**

DEEPAYAN MOHANTY **..... Plaintiff**

Through: Mr. Rohit Puri, Advocate

versus

CARGILL INDIA PVT LTD & ORS **..... Defendants**

Through: Mr. Shadan Farasat and Mr. Bharat Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

I.A. No.3108/2021 (of the defendant no.1 u/O-V R-1, O-VIII R-1 & S.151 CPC), I.A. No.3112/2021 (of the defendant no.3 u/O-V R-1, O-VIII R-1 & S.151 CPC) and I.A. No.3116/2021 (of the defendant no.2 u/O-V R-1, O-VIII R-1 & S.151 CPC)

1. The present application has been filed on behalf of the defendants seeking condonation of delay in filing of their written statements.
2. The present summary suit has been filed under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) seeking recovery of Rs.3,25,56,496/- along with future and *pendente lite* interest.
3. Vide judgment dated 3rd August, 2018, the Single Judge of this Court dismissed the application of the defendants for grant of leave to defend and the suit was decreed. The said judgment was challenged by the defendants before a Division Bench of this Court in RFA(OS) 72/2018, whereby vide

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judgment dated 9th December, 2019, the defendants were granted conditional leave to defend. The condition was for the defendants to deposit a sum of Rs.3,25,56,496/- within eight weeks from the said date. Before the expiry of the said period of eight weeks, the defendants filed a Special Leave Petition before the Supreme Court, being SLP(C) No.2553/2020, challenging the judgment dated 9th December, 2019 to the extent it required the deposit of the aforesaid amount by the defendants. The Supreme Court vide order dated 31st January, 2020, while issuing notice in the SLP, stayed the deposit of the aforesaid amount.

4. Based on the above, it is contended on behalf of the counsel for the defendants that the limitation period for filing the written statements would commence from 31st January, 2020, when the Supreme Court passed the aforesaid order. Therefore, the thirty days' period for filing the written statements would have expired on 1st March, 2020 and before the condonable period of further sixty days expired, the Supreme Court order dated 23rd March, 2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 titled *In re: Cognizance for Extension of Limitation* (SMW No.3/2020) came into effect, whereby it was observed that the period with effect from 15th March, 2020 has to be excluded for the purposes of counting limitation. It is submitted that the aforesaid order of the Supreme Court was further clarified in the order dated 8th March, 2021 to include within the ambit of the excluded period the outer limit within which a Tribunal or Court could condone delay.

5. It is submitted that the written statements could only have been filed by the defendants upon the depositing of the amount as ordered by the Division Bench and the written statements could not have been accepted by

the Registry before the deposit of the aforesaid amount.

6. Counsel for the plaintiff vehemently opposes the present application on the ground that the Division Bench order did not give the defendants eight weeks' time to file the written statements. Time of eight weeks was only given to deposit the aforesaid amount. Therefore, there was no reason why the written statements could not be filed by the defendants before the aforesaid period. He further states that no valid reasons have been given by the defendants in their present applications for seeking condonation of delay in filing of the written statements. He further submits that if the period for filing the written statements has to be counted from 9th December, 2019, the condonable period stood expired before 15th March, 2020 i.e., prior to the date from which exclusion was ordered by the Supreme Court.

7. I have heard the counsels for the parties.

8. In view of the dismissal of the leave to defend applications by the Single Judge, no written statements could be filed on behalf of the defendants. Conditional leave was granted to the defendants by the Division Bench vide order dated 9th December, 2019, subject to the defendants depositing a sum of Rs.3,25,56,49/- within eight weeks. Once again, the right of the defendants to file written statements would arise upon depositing the aforesaid amount, failing which filing of written statement would have been an exercise in futility. The requirement to deposit a sum of Rs. 3,25,56,49/- was dispensed with by the Supreme Court vide order dated 31st January, 2020, while issuing notice in the aforesaid SLP filed by the defendants.

9. Requirement of depositing the suit amount having been stayed by the Supreme Court, that was the stage when the defendants could have filed

their written statements. Counted from 31st January, 2020, the thirty days' period would have expired on 1st March, 2020 and before the further condonable period of sixty days in terms of Order V Rule 1 and Order VIII Rule 1 of the CPC expired, the COVID-19 pandemic had set in and the Supreme Court orders passed in SMW No.3/2020 became applicable.

10. In view of the order dated 8th March, 2021 in SMW No. 3/2020, the defendants were entitled to the exclusion of the limitation period specified therein, commencing from 15th March, 2020 till 14th March, 2021, even in respect of the condonable period for filing the written statement. In view of the above, the written statements filed on 12th October, 2020 would be deemed to have been filed within the condonable period for filing written statement.

11. Even if it is assumed that the period for filing the written statements has to be counted from the date of the Division Bench order dated 9th December, 2019, the Court has discretion to condone the aforesaid delay if just a sufficient cause is provided by the defendants. This is not a commercial suit where there is no discretion given to the Court to condone the delay beyond the maximum prescribed condonable period. Valid reasons have been given by the defendants for condoning the delay in filing the written statements. In paragraph 12 of the application, defendants have stated that there were various restrictions on account of the onset of the COVID-19 pandemic. The defendants' offices were closed for the said period and therefore, the written statements could not be filed in a timely manner.

12. In any event, no prejudice shall be caused to the defendants if the written statements are allowed to be taken on record as the proceedings are

pending before the Supreme Court in relation to the leave to defend application filed on behalf of the defendants.

13. Accordingly, subject to payment of costs of Rs.25,000/- by each of the defendants to the plaintiff, the written statements are allowed to be taken on record.

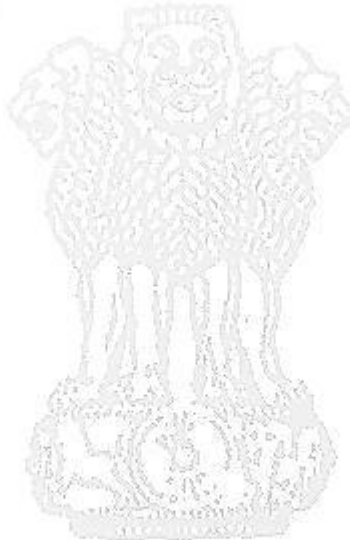
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14. Replication be filed within a period of four weeks.

15. List before the Joint Registrar on 13th May, 2022.

MARCH 29, 2022
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AMIT BANSAL, J.



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