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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1207/2018 & CM APPL. 41171/2018
ESSEL MARKETING & PROMOTIONS PVT LTD..... Petitioner
Through Mr. Pranaya Goyal, Mr. Nikhil
Ranjan, Advs.
versus

M/S ESSEL PROPACK LTD Respondent
Through Dr. Sheetal Vohra, Mr. Sridharan
Ram Kumar, Advs.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **10.10.2018**

The petitioner assails the impugned order dated 13.07.2018 of the learned ADJ-04, PHC, New Delhi in TM No. 109/17 whereby an opportunity for filing the written statement of the petitioner herein was closed taking into account that the written statement was not filed within the stipulated extended discretionary period of 90 days.

Vide the impugned order, it is observed *inter alia* to the effect that the petitioner herein had not disclosed the stated specific compelling circumstances in the reply that had been filed to the application under Order 8 Rule 10 CPC filed by the plaintiff i.e. the respondent herein to explain as to why the written statement could not be filed within the stipulated period of time had merely stated that due to unavoidable circumstances including making attempts to manage and salvage the business post the passing of

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injunction order, the written statement could not be filed, which was not sufficient to condone the delay in as much as there has been a gross delay with the petitioner herein having been served with the summons for settlement of issues on the date 09.06.2017 with appearance having been entered on behalf of the petitioner on the date 28.08.2017 but the written statement despite the same was not filed till 23.11.2017 nor thereafter.

On behalf of the petitioner, it has been submitted in relation to this aspect qua the lack of explanation having been put forth beyond the aspect of the unavoidable circumstances due to passing of an injunction order, to the effect, that attempts were made for settlement between the parties which were in negotiation between them and that there are e-mails that have been exchanged between the petitioner herein and the respondent on 10.07.2017 onwards qua which it has been submitted on behalf of the respondent that the last e-mail which had been sent on behalf of the respondent herein to the plaintiff of the suit in question was on 08.09.2017 and that there was nothing prevented the petitioner from filing the written statement within the stipulated period of time taking into account the factum that the petitioner had also submitted an application under Order 39 Rule 4 CPC which is stated to be pending before the learned Trial Court for consideration for today.

Inter alia reliance has been placed on behalf of the petitioner on a catena of the verdicts of the Hon'ble Apex Court in ***Kailash Vs. Nankhu and others (2005) 4 SCC 480***, ***Rani Kusum (Smt.) Vs. Kanchan Devi (Smt.) and others (2005) 6 SCC 705*** and two verdicts of the Court in ***Prem CM(M) 1207/2018***

Lata and Others Vs. Rajender Soni 2005 SCC OnLine Del 1323 and in *Amar Singh Sharma & Ors. Vs. Anand Kumar Sharma 2010 SCC OnLine Delhi 2112* to submit that the direction in terms of application under Order 8 Rule 1 CPC have been held to be directory and not mandatory being part of procedural law and that extension of time has been permitted to be granted in cases where there would be grave injustice caused if the time was not extended but that costs may be imposed on the petitioner for the same, whilst admitting that there has undoubtedly been a gross delay in the instant case. On behalf of the respondent, it has been submitted that through the verdicts cited on behalf of the petitioner, it has laid down categorically observing to the effect that the provisions of Order 8 Rule 1 CPC are directory, nevertheless each day's delay needs to be unnecessarily explained by the petitioner which has not been so done and that the last e-mail exchanged between the parties was on 08.09.2017 and that the written statement was sought to be filed only with the present appeal which it is submitted on behalf of the petitioner is dated 24.05.2018 qua which it has been submitted on behalf of the petitioner that even during the course of the proceedings dated 28.05.2018 before the Trial Court it had been submitted on behalf of the petitioner herein that the petitioner's written statement was ready and could be filed during the course of the said date i.e. 28.05.2018 on which however the matter was also fixed for arguments on the application under Order 8 Rule 10 CPC filed by the respondent on which the order were also directed to be so passed on 13.07.2018 which is the date of the impugned order and as a consequence of which the petitioner could not file the written statement.

Taking into account the factum that the matter is now at the stage of the arguments on application under Order 39 Rule 4 CPC that has been filed on behalf of the petitioner herein, and also the aspect admittedly through the e-mail exchanged between the parties reflecting that there exists a scope for settlement especially taking into account also an e-mail dated 19.07.2017 sent on behalf of the petitioner herein through its counsel stating *inter alia* to the effect : -

“1. Our client will cease all use of the mark ‘ESSEL PLASTPACK’ and will ensure that its affiliates cease all use of the mark ‘ESSEL PLASTPACK’ in respect of any business whatsoever within 3 months from the date of Settlement Agreement.”

It is considered appropriate to allow the prayer made by the petitioner seeking permission to file the written statement in the interest of justice which is stated to be annexed alongwith the present appeal which needs necessarily to be filed before the Trial Court, which be filed within 3 days w.e.f. today subject to payment of costs by the petitioner of Rs.75,000/- to the respondent.

The petition and its accompanying applications are disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

OCTOBER 10, 2018/MK