

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 295 OF 2018

1. Mr. Sahil Gupta,
Partner of Aqua Beach Resorts,
son of Shri R. K. Gupta, of major
age, businessman,
resident of B-8, East of Kailash,
New Delhi – 110 048
(since deceased)
through legal heirs/
representatives:

(1a) Ms. Nidhia Gupta
wife of Late Mr. Sahil Gupta,
aged 37 years;

1(b) Ms. Tia Gupta ,
daughter of Mr. Sahil Gupta, minor
of age 11 years;

1(c) Mast. Adi Gupta,
son of Sahil Gupta, minor
of age 8 years,
Petitioner No.1(b) & 1(c) through
petitioner 1(a) Guardian

All residents of B-8,
East of Kailash,
New Delhi – 110065.

2. Mr. Ranjan Gupta,
Partner of Aqua Beach Resorts,
Son of late Ved Mr. Prakash Gupta, aged
57 years, businessman,
resident of W-40, Greater
Kailash-I, New Delhi-110048.

3. Mr. Ajay Sharma,
Partner of Aqua Beach Resorts,
Son of Shri M. K. Sharma, aged
48 years, businessman,
resident of A-91, C. R. Park,
New Delhi.

..... Petitioners

V e r s u s

1. Mr. Ashok Lakhani,
son of late Chetan Das
Lakhani, aged 53 years,
married, businessman,
resident of 15-A,
Ashoka Avenue, Central Drive,
DLF Farms, Chattarpur,
New Delhi – 110074.
 2. Aqua Beach Resorts,
through its Partners,
with registered office
at M-2 (FF), Greater Kailash-I
New Delhi – 110048, and
presently operating from
B-25, Ansal Village, Satbari Farm,
New Delhi – 110030.
 3. Mr. Ashwin Kumar Handa,
Partner of Aqua Beach Resorts,
son of Mr. Omprakash Handa, aged
66 years, married,
businessman, resident of
B-25, Ansal Village,
Satbari Farm, New Delhi 110030.
 4. Mrs. Madhu Handa,
Partner of Aqua Beach Resorts,
wife of Shri Ashwin Kumar Handa,
aged 62 years, business,
resident of B-25, Ansal
Village, Satbari Farm,
New Delhi – 110030.
 5. Seema Gupta,
Partner of Aqua Beach Resorts,
wife of Shri Kuldeep Gupta,
aged 62 years, business,
resident of 710, Sec-15,
Faridabad (Haryana)
- Respondents

Shri D. J. Pangam, Advocate for the Petitioners.

Shri R. G. Ramani and Shri Shenvi Kakodkar, Advocates for the Respondents.

Coram :- C. V. BHADANG, J

Date :- 15th February 2019.

JUDGMENT

Rule, made returnable forthwith. Learned Counsel for the Respondents waives service. Heard finally by consent of parties.

2. The petitioners, who are the defendant nos.5, 7 and 8 are challenging the order dated 29.01.2018 passed by the learned Trial Court in view of the applications exhibit D-28 and D-33 refusing to grant extension of time/condonation of delay in filing the written statements.

3. The petitioners filed an application dated 20.08.2016 before the Trial Court claiming that they became aware of the filing of the suit only on 15.06.2016 from the defendant no.6. It was claimed that the defendant nos.7 and 8 were travelling and were not available in Delhi to sign the written statement. In such circumstances, it was prayed that the written statement of the defendant no.5 (which was annexed to the application) may be taken on record and time may be granted to defendant nos.7 and 8 to file their written statement. The record shows that eventually the defendant nos.7 and 8 filed written statement on

01.10.2016 and with yet another application for condonation of delay/extension of time. Both these applications have been dismissed by the impugned order. Hence this petition.

4. I have heard Shri Pangam, the learned Counsel for the petitioners and Shri R. G. Ramani, learned Counsel for the first respondent no.1 (original plaintiff who alone is the contesting respondent). Perused record.

5. On hearing the learned Counsel for the parties, it does appear that according to the petitioners they became aware of the filing of the suit on 15.06.2016 from the defendant no.6 and their case appears to be that they were not served with the suit summons. The order sheet dated 28.06.2016 of the Trial Court shows that the Trial Court had directed the office to check whether the petitioners (defendant nos.5, 7 and 8) are served with the suit summons and there is a report dated 07.07.2016 which shows that the office did not receive the AD cards duly signed by the petitioners. On behalf of the first respondent, a tracking report was produced to claim that the article which was sent by registered post AD was delivered on 04.04.2016. However, it is contended on behalf of the petitioner that the address shown in the cause title of the plaint was not the correct address. The defendant no.5 is shown residing at B-8, East of Kailash, New Delhi - 110048 whereas

his correct address is E-302, 2nd Floor, Greater Kailash Part 1, Delhi 110048. In support thereof, the petitioner has produced a copy of the passport.

6. Considering the overall circumstances, it does appear that the petitioners in all probability, were not served with the suit summons. After becoming aware of the filing of the suit on 15.06.2016, the petitioner no.1 i.e. the defendant no.5, filed an application for condonation of delay/extension of time on 20.08.2016 while defendant nos.7 and 8 filed written statement on 01.10.2016 on the ground that they were not available for signing the written statement. It is now well settled that the provisions to Order VIII Rule 1 of Civil Procedure Code requiring the defendant to file the written statement within a specified period are directory in nature and in an appropriate case, the Court can extend the time/condone the delay in filing the written statement.

7. Considering the circumstances as a whole, I do find that the petitioners have made out a case for permitting them to file the written statement.

8. In the result, the petition is allowed. The impugned order is hereby set aside. The applications exhibit D-28 and 33 are allowed subject to the deposit of costs of Rs.15,000/- before the Trial Court

within fifteen days from today. The Trial Court shall take the written statements on record, subject to payment of costs as aforesaid.

C. V. BHADANG, J.

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