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

+ CM(M) 115/2019 & CM APPL. 3415/2019

ADIGEAR INTERNATIONAL Petitioner

Through Mr. Hrishikesh Baruah, Mr. Pranav
Jain, Mr. Siddhant Kaushik, Ms.
Radhika Gupta, Advs.

versus

DHAN SINGH Respondent

Through Mr. Prateek Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **15.03.2019**

The petitioner assails the impugned order dated 04.12.2018 of the learned Trial Court in CS No. 118/17 vide which the application under Order 8 Rule 1 of the CPC filed by the petitioner herein, arrayed as the defendant to the said suit, seeking condonation of delay in filing the written statement was declined.

It is indicated through the record that the petitioner herein was served through publication initially and the complete set of documents were supplied to the petitioner on 20.01.2018 and that subsequently vide order dated 15.03.2018, a submission had been made on behalf of the petitioner herein i.e. the defendant that an appropriate application seeking condonation of delay would be filed to file the written statement in view of the submissions made on behalf of the plaintiff of the said suit i.e. the respondent herein that the defendant may not be permitted to file the written

statement as the time period for filing the same had already elapsed and the learned counsel for the defendant has submitted that he would move appropriate application seeking condonation of delay and file the written statement on or prior to the next date.

The learned Trial Court observed to the effect : -

“Heard. Put up for filing WS with advance copy of the same to the opposite counsel atleast one week prior to the next date. Put up on 02.08.2018.”

The said written statement is indicated to have been filed on 02.05.2018 as observed vide order dated 02.08.2018 of the learned Trial Court alongwith the application seeking condonation of delay.

It has thus been submitted on behalf of the petitioner that in view of the proceedings dated 15.03.2018, the opportunity to file the written statement having already been granted vide order dated 15.03.2018, the petitioner had submitted the written statement in compliance thereof much before the period granted thereby atleast one week prior to the next date of hearing which was on 02.08.2018 having filed on 02.05.2018. It has been submitted on behalf of the respondent that there has been a lapse of about 70 days in the submission of the written statement and there has been no sufficient cause put forth for the same.

It has been sought to be averred on behalf of the petitioner herein as indicated through the application that had been filed before the learned Trial Court that though the copy of the documents and the plaint were supplied to the counsel for the defendant but due to miscommunication the same could

not be brought into the notice of the learned counsel for the defendant and it was only realized on 14.03.2018 that the said documents had been supplied which aspect was thus apprised on 15.03.2018 before the learned Trial court when the said submissions had been made that the application seeking condonation of delay would be filed and it had thus thereafter been filed.

Taking the totality of the circumstance of the case into account, the petition is allowed and the delay in submission of the written statement is condoned subject to the payment of costs of Rs.25,000/- by the petitioner to the respondent and subject to the payment of said costs on 18.03.2019 before the learned Trial Court, the written statement of the petitioner is allowed to be taken on record.

The petition is disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

MARCH 15, 2019/MK