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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 189/2019 & CM APPL. 4998-4999/2019
ZOOM IN GROUP Petitioner
Through Ms. Monica Chugh Manchanda, Adv.

versus

CRANE BEL INTERNATIONAL PVT LTD & ANR..... Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **04.02.2019**

CM APPL. 4998/2019

Exemption allowed subject to all just exceptions.

Application is disposed of.

CM(M) 189/2019 & CM APPL. 4999/2019

Vide the present petition, the petitioner assails the impugned order dated 19.12.2018 of the learned ADJ-04, South East, Saket Courts, New Delhi in CS No. 55/18 vide which an application under Order 8 Rule 10 CPC filed by the petitioner, arrayed as the plaintiff to the CS No. 55/18 seeking the striking of the defence of the defendant i.e. the respondent to the present petition was declined and an opportunity having been granted to the defendant that the written statement of the defendant was allowed to be taken on record subject to costs of Rs.500/- to be paid to the plaintiff and the matter having been renotified for replication, if any, framing of issues and admission denial of documents for 04.02.2019.

It has also been submitted on behalf of the petitioner by the counsel

present that the defendant was served way back on 28.04.2018 and the written statement was filed on 28.09.2018 without any application for condonation of delay and that the written statement was filed beyond the period of 120 days and that despite effective service on 26.07.2018, the said written statement was only filed as observed hereinabove on 28.09.2018. *Inter alia* reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in the case titled as *Mohammed Yusuf Vs. Faij Mohammad and Others* (2009) 2 SCC 513 contending to the effect that it is only in exceptional cases that the delay ought to be condoned in view of the specific provision of the CPC stipulating period of time in terms of Order 8 Rule 1 CPC with observations in paragraph 15 of the said verdict to the effect : -

“15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional case, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen Vs. Sir Alfred McAlpine & Sons

Ltd. that law's delay have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

to contend that there ought not to be any indiscriminate condition of delay in submission of the written statement.

Reliance is also placed on behalf of the petitioner on the verdict of this Court in the case titled as ***Nunhems India Pvt. Ltd. Vs. Prabhakar Hybrid Seeds 197 (2013) DLT 393*** to contend to similar effect.

A perusal of the impugned order indicates that an opportunity had been granted to the defendant to file the written statement and the matter was listed for filing of the written statement vide order dated 26.07.2018 for the date 20.09.2018 and the written statement was filed on 29.09.2018 after 9 days of the time granted vide order dated 26.07.2018 and the learned Trial Court observed to the effect that the delay of 9 days beyond the time extended was condoned and in view thereof the written statement was allowed to be taken on record subject to costs as imposed thereby.

It has been submitted on behalf of the applicant / petitioner that there was no application seeking condonation of delay filed to seek to file the written statement, which thus ought not to have been allowed to be taken on record and delay ought not to have been condoned.

Taking into account the factum as observed by learned Trial Court that beyond the period of the extended period of time vide which the written statement ought to have been filed by the date 20.09.2018, the written statement was filed after 9 days later, the learned Trial Court has exercised its discretion and allowed the said written statement to be taken on record. In the circumstances, it is not considered appropriate to interfere with the

impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution in relation thereto.

The petition and the accompanying application are declined.

ANU MALHOTRA, J

FEBRUARY 04, 2019/MK