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

+ **FAO(OS) (COMM) 375/2019 & C.M.54923/2019**

**HARINDER SINGH GROVER**

..... Appellant

Through: Mr.Ravi Sikri, Senior Advocate with  
Mr. Ajay Kumar and Mr. Deepak Yadav,  
Advocates

versus

**M/S AWFIS SPACE SOLUTION (P) LTD & ANR ....Respondents**

Through: None

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE ASHA MENON**

**ORDER**

**23.12.2019**

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1. The appellant/defendant No.1 is aggrieved by an order dated 01.10.2019, passed by the learned Single Judge in a suit for damages instituted by the respondent No.1/plaintiff relating to premature termination of a registered lease-deed in respect of an immovable property used for trade and commerce. By the impugned order, the learned Single Judge has declined to take on record the written statement filed by the appellant/defendant No.1 on the ground that the same has been filed beyond the period of 120 days.

2. It is not in dispute that the appellant/defendant No.1 was served with the summons in the suit on 07.03.2019. The Proviso engrafted to the amended provisions of Order VIII Rule 1 of the CPC insofar as it relates to a

commercial dispute of a specified value, requires a defendant to file the written statement within an extended period, for reasons to be recorded by the court and on payment of costs, as the court may deem fit, which period shall not extend beyond 120 days.

3. In the instant case, the period of 30 days reckoned from 07.03.2019, would have expired on 06.04.2019 and the outer limit of 120 days reckoned from 07.03.2019, would have expired on 06.07.2019. However, the appellant/defendant No.1 did not file the written statement till 30.07.2019. The explanation offered in the application for seeking condonation of delay is stated in paras 4 & 5, as follows: -

*“4. That the defendant No.1 submits that he is senior citizen aged 76 years old, have undergone by-pass open heart surgery, had to collect various documents to be filed which were scattered at his office, residence etc. and his health doesn't permit strenuous work.*

*5. That, besides this the defendant No.1 had to brief to his present lawyer for the drafting and preparation of written-statement as well as the counter-claim for which it required him to sit long hour, which his health did not permit, so, late coupled with the fact that the deteriorating health of the defendant No.1, financial problem and ignorance of the procedural rigmaroles all cumulatively added to the delay in filing the present written-statement along with counter claim”*

4. We have specifically enquired from Mr. Sikri, learned Senior Advocate appearing for the appellant/defendant No.1 as to when did he undergo a surgery as it has been stated in the application that his health did not permit him strenuous work. Learned Senior Advocate concedes on

instructions that the appellant/defendant No.1 underwent open heart surgery much before the date on which he was served with the summons in the suit. That being the position, the indisposition of the appellant/defendant No.1 cannot be a valid ground for non-filing of the written statement within the period prescribed in law.

5. The other explanation offered in the application is that the appellant/defendant No.1 was facing financial problems and was ignorant of the procedural rigmaroles. We are afraid even that would not be a ground for this court to interfere with the impugned order. We are of the opinion that the learned Single Judge was justified in declining to take on record a highly belated written statement filed by the appellant/defendant No.1, that too, in a suit raising a commercial dispute of a specified value, as in the present case. There is no cause much less just or sufficient cause demonstrated by the appellant/defendant No.1 for seeking condonation of the delay, not just for the period prescribed in Order VIII Rule 1 of the CPC, but also for the period beyond that as engrafted in the proviso, which, in any case, cannot be extended by the court under the Code.

6. For the aforesaid reasons, the present appeal is dismissed *in limine* as meritless alongwith the pending application.

**HIMA KOHLI, J**

**ASHA MENON, J**

**DECEMBER 23, 2019**

s/pkb