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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 4781 OF 2019  
WITH  
CIVIL APPLICATION NO. 1345 OF 2019  
IN  
CIVIL WRIT PETITION NO. 4781 OF 2019**

**ELECTRONICA INDIA LTD. THROUGH       ....PETITIONER  
ITS AUTHORISED REPRESENTATIVE**

**V/s.**

**ELECTRONICA HITECH MACHINES       ....RESPONDENTS  
TOOLS PVT. LTD.**

Mr. Hiren Kamod a/w Mrs. Heena Chheda, Mr. Bharatkumar Jain,  
Ms. Suchita Uppal, Ms. Preeta Panthaki and Mr. Aviral Jain  
advocate for the Petitioner

Mr. Aditya Chitale a/w Jehan Fulwadiwala a/w Anuya Pathare a/w  
Swati Jathar i/b RKD Legal Services LLP for Respondents

**CORAM :    NITIN W. SAMBRE, J.**

**DATE:        FEBRUARY 9, 2022.**

**P.C.:**

1)     In a Trade Mark Suit i.e. C.S. No. 11/2016 for injunction and  
damages, Petitioner-Defendant was served on 01/07/2016 and failure  
to file written statement has resulted into passing of 'No W.S.' order  
dated 02/02/2019.

2) Vide impugned order passed by the Trial Court on 02/02/2019, prayer of Petitioner-Defendant to condone delay of more than 600 days caused in filing W.S. on record and for taking W.S. on record is rejected. As Suit was ordered to be proceeded without W.S., feeling aggrieved, Petitioner-Defendant has preferred this Petition.

3) The submissions of learned counsel for the Petitioner are, Petitioner was served on 01/07/2016 and in view of provisions of Order VIII Rule 1 of Code of Civil Procedure, 1908, time to file written statement of 30 + 60 days has expired on 29/10/2016. It is claimed that in the intervening period i.e. from the date of moving an Application for condonation of delay and setting aside 'No. W.S.' order and for permission to place on record written statement, Petitioner was pursuing remedies viz. Application moved under Order VII Rule 11 of C.P.C. for rejection of Plaint which was carried upto Apex Court. It is claimed that in view of absence of proper advice, written statement could not be placed on record within time stipulated. Counsel for the Petitioner then would urge that additional written statement pursuant to amendment of the Plaint vide order dated 24/06/2019 is already on record. He would further claim that trial in

the Suit is yet to commence. That being so, Petitioner be permitted to place on record written statement subject to reasonable conditions. In response to Court's query, he would submit that Petitioner is willing to deposit cost of Rs. 1 Lakh to show bonafides.

4) Prayer is objected by the learned counsel for Respondent-Plaintiff Mr. Chitale. He would urge that intentional delay on the part of the Petitioner can be inferred from the very conduct as according to him, there is no reasonable explanation coming forward explaining the delay caused in placing on record written statement. Mr. Chitale would invite attention of this Court to the very language of Order VIII Rule 1 of the C.P.C. and according to him, even in the Application Exh. 42, no convincing reasons are furnished in the matter of setting aside 'No W.S.' order and permission to place on record written statement.

5) Considered rival submissions.

6) On 01/07/2016, Petitioner-Defendant was served with Suit Summons and has chosen not to file written statement till passing of impugned order i.e. 02/02/2019. Prayer for setting aside 'No W.S.' order with condonation of delay was rejected on 02/02/2019 in view

of the aforesaid conduct of the Petitioner particularly having regard to the fact that Petitioner though was served, has chosen not to file written statement within statutory period as so rightly pointed out by Mr. Chitale, learned counsel for Respondent. However, this Court is required to be sensitive to the following issues:

(a) That the additional written statement to amendment to the Plaint carried out by Respondent-Plaintiff is taken on record on 18/07/2019

(b) Trial in the Suit is yet to commence and

(c) The Trial Court has committed an error in recording reasons thereby applying provisions of Commercial Courts Act.

7) In the aforesaid background, in my opinion, order impugned passed below Exh. 42 warrants interference.

8) Support can be drawn from the Judgment of the Apex Court in the matter of **Zolba Vs. Keshao and Ors**<sup>1</sup> wherein the Apex Court observed that provisions of Order VIII Rule 1 of Code of Civil Procedure are not mandatory and the Court in the given set of facts and circumstances can extend the time for taking written statement on record.

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<sup>1</sup> [AIR 2008 SC 2099]

9) As such, order impugned passed below Exh. 42 is hereby quashed and set aside subject to payment of cost of Rs. 1 Lakh to which Respondent-Plaintiff will be entitled to withdraw. Cost to be deposited before the Trial Court within period of six weeks from today.

10) Alongwith cost, Petitioner must tender his written statement, if not already tendered, failing which order granting permission to place on record written statement shall be kept in abeyance without further orders of the Court and the Trial Court to proceed with the Suit as if the order dated 02/02/2019 is governing the field and the parties.

11) Petition stands allowed in the above terms.

12) Since the Suit is more than 5 years old, hearing of same is expedited.

13) As a consequence, Civil Application also stands disposed of.

**[NITIN W. SAMBRE, J.]**