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A.No.4884 of 2022

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in
C.S.(Comm.Div).No.115 of 2021

C.SARAVANAN, J.

This application has been filed for condoning the delay in representing the written statement. The facts on record indicate that the suit summons was served on the applicant/defendant on 20.12.2021. Ordinarily in terms of the amended provisions of CPC has made applicable to commercial disputes under the provisions of the Commercial Courts Act, 2015. A written statement should have been filed within a period of thirty days from the date of receipt of summons. In other words, the last date for filing a written statement within the period of limitation would have expired on 18.01.2022. A further grace period of 90 days is given for filing a written statement under Order VIII of the amended provision of CPC as made applicable to commercial disputes under the provision of the Commercial Courts Act, 2015.

2. As per proviso to Rule1 of Order VIII as made applicable to the Act, Defendants is/are allowed to file the written statement on such other



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day, as may be specified by the Court, for the reasons to be recorded in writing and on payment of such costs as the Court deems fit, on such day, as may be specified by the Court, which shall not be later than one hundred twenty days (120) from the date of service of summons and on expiry of one hundred twenty days (120) from the date of receipt of summons, the defendants shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

3. The facts on record indicate that before the expiry of the 120th day on 19.04.2022, the applicant/defendant had indeed filed a written statement on 07.02.2022. However, the written statement did not accompany any application for condoning the delay beyond the 30th day from the date of service of summons by the applicant/defendant.

4. The written statement was later returned on 18.02.2022. Thereafter, the present application has been filed by the applicant/defendant, beyond 120th day from the date of receipt of summons.



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5. During the interregnum, the respondent/plaintiff also appears to have filed A.No.3914 of 2022, for filing additional documents which was allowed by this Court on 27.09.2022.

6. It appears that the respondent/plaintiff had also filed another application under Section 151 of CPC on 02.08.2022, to expunge few statements in the written statement. However, it has not been numbered so far as the written statement of applicant/defendant is not on record and therefore, question of numbering the aforesaid application does not arise.

7. The application for condoning the delay in re-presenting the written statement is stoutly opposed by the learned counsel for the respondent/plaintiff. A strong reliance is placed on the decision of the Delhi High Court in the case of **Ok Play India Private Limited Vs. A P Distributors and another**, 2021 SCC Online Del 4043. A specific reference is made to paragraph 14, which reads as under:

“14. To sum up, when a written statement is filed after 30 days of service of summons but before the expiry of further 90 days, the filing of the written statement must be accompanied with a written application setting out the reasons for the delay to allow the court to consider the reasons so given, to condone delay and receive the



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belated written statement giving reasons for granting such leave and enabling the court to impose appropriate costs. No application can be filed, seeking condonation of delay in filing the written statement after 120 days have elapsed from the date of service of summons.”

8. It is the submission of the learned counsel for the respondent/plaintiff that the written statement filed on 07.02.2022, was without an application for condoning the delay in filing Written Statement and therefore the Written Statement filed was not a Written Statement in the eye of law and therefore the limitation prescribed under amended Order VIII of CPC as made applicable to the Commercial Courts Act, 2015 stares at the applicant/defendant.

9. It is submitted that since the application for condoning the delay has been filed well beyond the limitation prescribed under the aforesaid provisions of amended CPC, the present application filed for condoning the delay in representing the written statement was liable to be rejected. It is further submitted that the limitation prescribed under Order VIII of CPC as made amended for the purpose of Commercial Courts Act, 2015 is sacrosanct and cannot be diluted and hence prayed for dismissal of the application.



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10. By way of rejoinder, the learned counsel for the applicant/defendant submits that he has instructions to submit that the decision of the Delhi High Court referred to supra by the learned counsel for the respondent/plaintiff has been stayed. He has however not filed a copy of the order.

11. I have considered the arguments advanced by the learned counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff.

12. I am of the view, the written statement filed on 07.02.2022 is to be construed as a written statement for the purpose of amended Order VIII Rule 1 of CPC as made applicable to provisions of Commercial Courts Act, 2015. Mere non-filing of the application would not mean that the written statement was not filed in time within the condonable period under proviso to Order VIII Rule 1 of CPC as amended for the purpose of Commercial Courts Act, 2015 was not a written statement in the eye of law.



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13. The applicant/defendant was however required to file an application for condoning delay explaining the reasons given for not filing the written statements within the initial period of thirty days prescribed under Order VIII as amended for the purpose of Commercial Courts Act, 2015. The purpose of filing the application is to condone the delay and to impose cost.

14. I am unable to subscribe to the view taken by the Delhi High Court in the above case. In my view, the objection raised by the learned counsel for the respondent/plaintiff that the written statement was not a written statement in the eye of law has to be overruled. Accordingly, it is overruled. If such a view is entertained, it will lead to absurdity and would defeat the very purpose for which the right of defence recognized in law. Such rights cannot be allowed to be diluted especially when the Written Statement was filed within the condonable period of 120 days.

15. In the affidavit filed in support of the application for condoning the delay in re-presenting the written statement, the applicant/defendant has clearly explained the reasons for condoning the delay.



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16. Being satisfied with the reasons given in A.No.4884 of 2022, I am inclined to allow the application. Considering the delay in re-presenting the written statement, the written statement is taken on records subject to the applicant/defendant paying a sum of Rs.5,000/- (Rupees Five Thousand only) to the Chief Justice Relief Fund, High Court, Madras within a period of one week from today. It is made clear that if the applicant/defendant fails to pay the cost within such time, this order shall stand automatically vacated.

17. Both the counsels are requested to file a draft schedule for Case Management, so that the case can be proceeded with the recording of evidence during the month from January 2023 onwards.

18. List this case on 22.12.2022 for filing draft issues for the plaintiff and defendant and for fixing a schedule for Case Management.

12.12.2022

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