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

+ CM(M) 946/2022 & CM APPL. 40086/2022, CM APPL. 40087/2022, CM APPL. 40088/2022

CLASSICO BRANDS (INDIA) PVT. LTD Petitioner
Through: Mr.Ankit Jain, Mr.Mohit Goel,
Mr.Abhishek Kotnala, Mr.Deepankar
Mishra and Ms.Jyoti Goyal, Advs.

versus

MIS STELLA INDUSTRIES LIMITED Respondent
Through: Mr.Amit Bhatia and
Mr.Samyak Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T O R A L

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12.09.2022

1. CS (Comm) 89/21 was filed by the respondent against the petitioner under the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015. Learned Counsel are *ad idem* that summons in the suit were served on the petitioner on 16th February 2022.

2. Oder VIII Rule 1 of the CPC stipulates 30 days from the date of service of summons as the time within which written statement may be filed in response to the suit. The proviso to Order VIII Rule 1 of the CPC, as substituted by the Commercial Courts Act, reads as under:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit,



but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

3. As such, while the normal period for filing a written statement in response to the suit would expire 30 days from the date of service of summons, the written statement may be filed within a further period of 90 days, subject to reasons to be recorded in writing by the Court. Needless to say, it would be for the defendant to seek condonation of delay.

4. In commercial suits, no power vests in the Court to condone the delay beyond 120 days.

5. The first order under challenge in the present petition, passed by the learned Commercial Court on 11th May 2022, records that, on 16th February 2022, the petitioner entered appearance and undertook to file written statement within 15 days. No written statement having been filed till 11th May 2022, the learned Commercial Court struck off the defence of the petitioner.

6. The petitioner applied, under Section 151 of the CPC for recall of the aforesaid order dated 11th May 2022. It was contended, in the said application, that learned Counsel for the petitioner had, in fact, not been able to virtually join the proceedings on 11th May 2022 and that, by the time learned Counsel for the petitioner reached the Court, the matter already stood adjourned.



7. The learned District Judge (“learned DJ”) in its order dated 13th July 2022 has, after noting the aforesaid submission, rejected the petitioner’s recall application, holding thus:

“Intriguingly, the defendant has nowhere explained in the entire application as to why it had not filed written statement within 15 days from 16.02.2022 as undertaken by its counsel on that day or atleast, before 11.05.2022. It may be noted here at the cost of repetition that the defence of the defendant was struck off on 11.05.2022 not because of the nonappearance of the defendant or its counsel on that day but because of nonfiling of the written statement within the stipulated period of time.

In view of the same, no case has been made out for recalling of the said order dated 11.05.2022. The application is found to be without any merit. Therefore, the same is hereby dismissed.

It also needs note here that the defendant has itself stated in para 16 of the above application that it had been served with the plaint in this case on 16.02.2022 and, therefore, the statutory time period for filing written statement expired on 16.06.2022.

The defendant has filed written statement on 02.07.2022 along with an application u/s 151 CPC for condonation of delay in filing the same. The said written statement has not only been filed after the defence of the defendant was struck off by this court vide order dated 11.05.2022 but also patently, after the expiry of outer statutory limit of 120 days from the date of service of summons upon it. Hence, the same cannot be taken on record. For the same reasons, application for condonation of delay in filing written statement is also found to be misconceived and is hereby dismissed.

The written statement filed by the defendant on 02.07.2022, as noted herein above, is taken off the record. The defence of the defendant remains struck off.”



8. Learned Counsel are *ad idem* that the maximum period of 120 days envisaged by the proviso to Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act expired on 16th June 2022, when Courts were on leave. Functioning of Courts resumed on 1st July 2022. Learned Counsel for the petitioner submits that, on 1st July 2022, his clerk had filed the written statement in the Court of the learned DJ along with an application for condonation of delay. As against this, learned Counsel for the respondent submits that the written statement was filed on 2nd July 2022 and was, therefore, barred by the proviso to Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act.

9. The dispute is essentially relating to one day, though that day would be crucial. In case the written statement was not filed on 1st July 2022 but on 2nd July 2022, then, perhaps, the learned Commercial Court could not have condoned the delay in view of the absolute proscription contained in the proviso to Order VIII Rule 1 of the CPC read with the judgment of the Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP***¹.

10. A reading of the afore-extracted passages from the impugned order dated 13th July 2022 of the learned Commercial Court reveals that the learned Commercial Court has not considered, on merits, the petitioner's application for condonation of delay. The learned Commercial Court has proceeded on the premise that, as the written statement was filed beyond the outer limit of 120 days, provided in the

¹ (2020) 15 SCC 585



proviso to Order VIII Rule 1 of the CPC, it could not be taken on record.

11. In view of the fact that there is a dispute regarding the date when the written statement was filed, it would be appropriate for the learned Commercial Court to re-examine the matter. In case the learned Commercial Court finds that the written statement was indeed filed on 1st July 2022, the learned Commercial Court would then consider the aspect of condonation of delay on merits.

12. The impugned orders dated 11th May 2022 and 13th July 2022 are therefore, set aside and the matter is remanded to the learned Commercial Court to reconsider the aspect of delay in filing the written statement in view of the observations made hereinabove.

13. To make matters clear, the learned Commercial Court would have to examine

- (i) whether, as the petitioner contends, the written statement was in fact filed on 1st July, 2022 and
- (ii) if so, whether the delay in filing the written statement deserved to be condoned.

If the written statement were to be found to have been filed on 2nd July, 2022, then, of course, nothing would remain to be considered, as the petitioner would be hit by the 120-day proscription contained in the proviso to Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act.



14. The petition is allowed to the aforesaid extent with no orders as to costs. Pending applications also stand disposed of.

C. HARI SHANKAR, J

SEPTEMBER 12, 2022/kr

