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A.No.3614 of 2023
in
C.S.(COMM.DIV).No.2 of 2023

P.T.ASHA, J.,

The application is filed for condoning the delay of 123 days in representing the Written Statement of the defendant in the above suit.

2. The suit in question has been filed questioning the infringement of Trademark "**VARAM**" of the plaintiff by using the very same name with an extra 'M'. The sole defendant in the above suit was served on 13.01.2023. The respondent/plaintiff had obtained an interim order of injunction by orders of this Court dated 11.01.2023 and the interim order was being extended periodically. Ultimately, the interlocutory application for interim injunction was dismissed by orders of this court dated 15.06.2023 and thereafter when the matter was listed on 04.07.2023, the defendant had sought time to bring up the Written Statement.



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3. The present application has been filed to condone the delay in representing the Written Statement. In the affidavit that has been filed in support of the said application, the applicant/defendant would contend that the Written statement had been filed on 08.02.2023 within the period of 30 days from the date of summons. The Written Statement was returned by the Registry for certain compliances and the same was represented on 11.07.2023, as a result of which there was a delay of 123 days in representing the same. The delay, according to the applicant, had occurred only on account of the fact that the Written Statement had been misplaced in the office of their counsel and ultimately it was found along with a disposed of bundle. Thereafter, the defects were rectified and it has been filed with the requisite application for condoning the delay in representation.

4. The learned Counsel appearing for the applicant/defendant



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would submit that the delay is one for representation and had occurred only on account of the fact that the Written Statement had got misplaced in a disposed of bundle. As soon as they had retrieved the Written Statement, they had taken steps to file the same. He would submit that the provisions of Rule 8 of Order 15(A) of the Schedule to the Commercial Courts Act can be invoked and the applicant may be put on terms for allowing the Application.

5. Per contra, Mr. Abishek Jenasenar, learned Counsel appearing on behalf of the respondent/plaintiff would submit that in the normal course he would not object to an application for condoning the delay in representation as the same is one between the Court and the counsel. However, in the instant case, he is compelled to bring to the notice of the Court the fact that the Written Statement had been originally filed on 08.02.2023 and on the very next day it has been returned. In fact, the learned counsel for the plaintiff was not served with the copy of the



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said Written Statement. He would further submit that the Written Statement must have been filed only to get over the limitation without it being a Written Statement as contemplated under the Act and the Code and therefore the time line of 120 days has to be scrupulously followed and since the application itself been moved much beyond the 120 days period, the application should be rejected. He would also rely upon a judgment of the Hon'ble Delhi High Court reported in **2021 SCC OnLine Del 4043 - Ok Play India Pvt. Ltd. Vs. A. P. Distributors and Another.**

6. Heard the counsels on either side.

7. It has to be first verified as to whether the applicant is seeking to condone the delay in representation or whether it is a case of condone delay in filing the Written Statement. A perusal of the original Written Statement would indicate that the same had been filed on 08.02.2023 and on the very next day the same has been returned with



has been filed is only an unsigned Written Statement. In fact, the perusal of the returns would show that not only was it not signed by the applicant/defendant but also by his counsel. Therefore, the time for filing the Written Statement has to be counted from the date of service of notice which is 13.01.2023. The written statement ought to have been filed on or before 12.02.2023 and the further 90 days time expired in the month of May 2023 itself.

9. Therefore, in the light of the judgment of the Hon'ble Supreme Court reported in ***(2019) 12 SCC 210 - SCG Contracts India Private Limited Vs. K.S.Chamankar Infrastructure Private Limited***, this Court does not have the power to extend the time for filing the Written Statement. The Judgment which has been cited on the side of the respondent/plaintiff i.e. ***2021 SCC OnLine Del 4043 - Ok Play India Pvt. Ltd. Vs. A. P. Distributors and Another*** was a case where the Written Statement was filed within the period of 120 days but however,



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the Application for condoning the delay was filed beyond the period of 120 days. The learned Judge relying upon the observation of the Hon'ble Supreme Court in Paragraph 8 of the judgement reported in ***(2019) 12 SCC 210 - SCG Contracts India Private Limited Vs. K.S.Chamankar Infrastructure Private Limited***, had observed as follows:-

" This Court is of the view that since it is not for the court to furnish reasons for condoning the delay in filing the written statement, it is necessary that the defendant, when filing a belated written statement, also submits to the court an explanation for the delay, by moving an application in this regard. A written application supported by an affidavit is a must for seeking condonation of delay.

Since the written statement has to be filed within



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120 days from the date of service of summons, and a filing beyond 30 days of service of summons is a delayed filing of the written statement, it is crystal clear that the application accompanying the belated filing of the written statement must necessarily have to be filed within the same time period, that is, 120 days. There is nothing in Order VIII C.P.C. to suggest otherwise."

10. In the light of the judgment of the Hon'ble Supreme Court in the case of **SCG Contracts India Private Limited** cited supra and the judgment of the Delhi High Court in the case of **Ok Play India Pvt. Ltd** cited supra, the above application has to be necessarily dismissed and accordingly the application is dismissed and the defendant has forfeited its right to file a Written Statement. He may however cross-examine the plaintiff. No costs.

11. Post the matter on 25.09.2023.



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10.08.2023

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