

\$~24

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

% Judgment delivered on: 28.04.2023

+ CM(M) 683/2023

WISDOM PET SHOP

..... Petitioner

versus

GNV COMMODITIES PVT LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Aggarwal, Advocate.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APP No. 21321/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 683/2023 & CM APP No. 21320/2023 (for stay)

3. Petitioner challenges the order dated 10.01.2023 in CS SCJ 130/21 titled as “GNV Commodities Pvt. Ltd. vs. Wisdom Pet Shop”, whereby the learned Trial Court had imposed a cost of Rs. 15,000/-, out of which Rs. 5,000/- was to be deposited with the DLSA, South East

and Rs. 10,000/- was to be paid to the respondent/ plaintiff.

4. The petitioner challenged the same by an appeal bearing MCA DJ No. 7/23 titled as “*Wisdom Pet Shop vs. GNV Commodities Pvt. Ltd.*” whereby *vide* the impugned order 13.04.2023, the learned First Appellate Court imposed a further amount of Rs. 5,000/- as costs apart from the costs of Rs. 15,000/- that was to be paid under the orders of the learned Trial Court.

5. Mr. Aggarwal, learned counsel appearing for the petitioner submits that after the pandemic, the business of the petitioner was in dole-drums and the petitioner is incapacitated to pay such high amount.

6. Learned counsel submits that this Court as well the Supreme Court in a catena of judgments have granted extension of time for the purpose of filing the written statement in ordinary civil suits and thus on that basis prays that the costs of Rs. 15,000/- as well as Rs. 5,000/- additionally as imposed by the First Appellate Court, may be set aside.

7. This Court as also the Division Bench of this Court in ***Jamaluddin vs. Nawabuddin & Ors.*** Neutral Citation Number - 2023/DHC/001211 as also the Hon’ble Supreme Court in ***Bharat Kalra vs. Raj Kishan Chabra*** reported as **2022 SCC Online SC 613**, have categorically held that delay in filing of written statements, so far as ordinary civil suits cases are concerned, the same may be condoned and the written statement taken on record, subject however to some reasonable compensatory costs.

8. It goes without saying that the rationale behind the judgments obviously was that the parties should litigate on merits rather than on technicalities.

9. In view of the fact that the other side needs to be compensated for such delay, this Court is of the considered opinion that it would be in the interest of justice to reduce the costs of Rs. 20,000/- to Rs. 10,000/-, out of which the petitioner is directed to pay Rs. 5000/- to the DLSA, South East District and balance Rs. 5,000/- to respondent/ plaintiff on or before 20.05.2023 against a proper receipt. The receipt be filed before the learned Trial Court under a proper index.

10. Upon such deposit and valid receipt shown against such costs having been paid, the learned Trial Court shall take the written statement, on record and proceed in accordance with law.

11. In view of the aforesaid, the present petition along with pending application is disposed of.

TUSHAR RAO GEDELA, J.

APRIL 28, 2023

nd