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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 13th February 2025***+ **CM(M) 302/2025 & CM APPL. 8730/2025 STAY****SIDDHANT KUMAR**

.....Petitioner

Through: Mr. Rakesh Nautiyal,
Adv

versus

MAYANK MALIK

.....Respondent

Through: Mr. Sumit Goyal, Mr.
Paras Chawla & Mr.
Vaibhav Kumar, Adv
along with respondent in
person.**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T (O R A L)****RAVINDER DUDEJA, J.**

1. The present petition is directed against the order dated 06.03.2024, passed by Additional District Judge, North-West, Rohini Courts, Delhi in Civil Suit (DJ) No. 60/2023, titled “*Mayank Malik Vs. Siddhanth Kumar*”, whereby, the application filed by the petitioner under Section 151 CPC seeking condonation of delay has been dismissed.

FACTS:

2. Respondent filed a Suit for Damage, alleging that petitioner had defamed him openly in public.



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3. Summons of the Suit along with copy of the plaint and documents were received by the petitioner on 27.03.2024.

4. Since no Written Statement was filed, learned trial court struck off the defence of the petitioner vide order dated 11.07.2023. Written Statement was filed by the learned counsel on 27.07.2023 with an application for condonation of delay in filing the written statement.

5. Vide order dated 06.03.2024, the application for condonation of delay in filing the written statement was dismissed by the court below.

CONTENTIONS OF PARTIES:

6. The arguments as advanced before this Court are the same as advanced before the trial court. It is submitted on behalf of the learned counsel for the petitioner that written statement handed over by the counsel to his junior got misplaced, and therefore, another copy of the written statement was prepared and placed on record on 27.07.2023.

7. It is further submitted that provision under Order 8 Rule 1 of the Code of Civil Procedure is not mandatory, and as such, the delay in filing the written statement could have been condoned by the learned trial court. It is also submitted that Order 8 Rule 1 CPC does not specifically take away the power of the Court to take the written statement on record, even though, the same is filed beyond the time as provided for.

8. It is further submitted that provision contained in Order 8 Rule 1 is procedural and not part of the substantive law and the rules of procedure should not come in the way of substantive justice to the parties.



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9. *Per contra*, learned counsel for the respondent submits that petitioner has failed to give any sufficient cause for the delay in filing the written statement, and therefore, there is no merit in the challenge to the present petition.

ANALYSIS & CONCLUSION

10. Admittedly, the suit filed before the trial court does not pertain to any commercial dispute. The Commercial Courts Act, 2015, through Section 16 has amended the CPC in its application to commercial disputes to provide as follows:-

"16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.-(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a specified value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a specified value.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."

11. Commercial disputes are governed by CPC as amended by Section 16 of the said Act, while the other non-commercial disputes fall within the ambit of unamended provisions of the CPC.

12. As regards the timeline of filing of written statement in a non-commercial dispute, the Supreme Court in the case of **Atcom Technologies Ltd. Vs. Y.A. Chunawala & Co.(2018) 6 SCC 639** has affirmed that the unamended Order 8 Rule 1 CPC continues to be



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directory and does not do away with the inherent discretion of courts to condone certain delays.

13. Even though, unamended Order 8 Rule 1 CPC is directory, it cannot be interpreted to give free hand to any litigant or lawyer to file written statement at their own sweet will or to prolong the *lis*. The legislative objective behind prescription of timelines as provide in CPC must be given due weightage so that disputes are resolved in a time-bound manner. Extreme hardship for delay occurring due to the factors which may be beyond the control of the parties despite diligence, may be just and equitable instances for condonation of delay. The Court therefore, in the present case, needs to consider whether the petitioner has made out a good case for exercising the discretionary jurisdiction under Article 227 of the Constitution.

14. Admittedly, the summons were served to the petitioner on 27.03.2023. Order 8 Rule 1 CPC provides outer limit of 90 days for filing the written statement. That being so, written statement should have been filed within 30 days or within the extended period of 90 days i.e. 26.06.2023. It is also not disputed that written statement was filed before the court on 27.07.2023, almost with a delay of just over a month.

15. Taking note of the submissions of the learned counsel for the petitioner, trial court was of the view that petitioner has made vague argument that written statement was misplaced by the junior associate and the same does not inspire confidence.

16. Perusal of the application for condonation of delay as also the



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grounds taken in the present petition, clearly reveal that the grounds for condonation of delay are actually vague and do not furnish any justified reason for delay in the filing the written statement.

17. Petitioner has failed to give any cogent reason for the delay and is unable to satisfy due diligence on his part.

18. However, taking a lenient view given the fact that there is only a delay of just over a month and without laying down the discretion being exercised hereinafter as a precedent, Court directs that the written statement filed by the petitioner on 27.07.2023 be taken on record, subject to cost of Rs. 25,000/- to the respondent.

19. Petition is allowed in the above terms.

RAVINDER DUDEJA, J.

February 13, 2025

RM