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

% *Date of Decision: 08th July, 2025*

+ CM(M) 316/2023
RAJESH KUMAR

.....Petitioner

Through: Mr. C.M. Grover, Mr. Kashish
Dhawan and Ms. Payal Budhiraja,
Advocates.

versus

AJAY KUMAR @ AJAY SINGH

.....Respondent

Through: Mr. Manish Sindwani, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner herein is plaintiff before the learned Trial Court and has filed a commercial suit which seeks recovery of Rs.5,42,449.35/-.
2. The suit is directed against his estranged son-in-law who, has, already, filed a suit against petitioner herein, seeking recovery of Rs.8 lacs. Such other suit is also pending adjudication.
3. Coming back to the suit filed by petitioner herein, admittedly, the defendant in the abovesaid commercial suit appeared before the learned Trial Court on 28.05.2022.
4. It is, however, pertinent to mention that the Service Report was not clearly indicative of due service upon him and on the basis of the request made by the plaintiff himself, the process was directed to be issued again, through ordinary mode as well as electronic mode.



5. Fact, however, remains that on the same date itself i.e. 28.05.2022, the defendant himself appeared in person before the learned Trial Court at 11:30 A.M. and, therefore, the learned Trial Court took up the matter again and copy of the plaint and necessary documents were also supplied to defendant. Importantly, learned counsel for the plaintiff and defendant also apprised the learned Trial Court that they were interested in amicable settlement of the matter.
6. Apparently, there is delay of 4 days in filing written statement and according to defendant, the delay had taken place as he had to approach *Delhi Legal Services Authority, Shahdara District* for seeking legal aid, so that, his case is duly represented before the learned Trial Court.
7. According to him, there was delay in appointment of legal aid counsel and the initially appointed legal aid counsel was changed as he had not done anything and, therefore, delay had occasioned.
8. When the defendant moved application seeking condonation in submitting such written statement, learned Trial Court, appreciating the abovesaid hardship expressed by the defendant, has condoned the delay.
9. Such order dated 07.01.2023 is under challenge.
10. It also needs to be highlighted that when the present petition was, earlier, taken up by this Court on 20.02.2024, there was no appearance from the side of the petitioner/plaintiff and observing that perhaps the petitioner was not interested in pursuing the present petition, the same was *dismissed-in-default*.
11. An application for restoration was filed by the plaintiff, which was, eventually, allowed by this Court on 07.05.2025.
12. This Court has heard arguments from learned counsel for both the



sides.

13. There is no scope of any debate or discussion with respect to the settled legal position that the time-period for filing written statement in a commercial suit cannot be extended beyond the maximum outer permissible limit of 120 days. Reference in this regard be made, in particular, to *SCG Contracts (India) Private Limited vs. Chamankar Infrastructure Private Limited: (2019) 12 SCC 2010*.

14. There is, however, one very significant aspect of the case which cannot be sidelined and disregarded.

15. The trial of the suit, in the interregnum, is already over and the case is now fixed for hearing of final arguments by the learned Trial Court.

16. In such a peculiar situation when the trial is already complete and the learned Trial Court is all set to hear final arguments, this Court does not feel any compelling reason to invoke its extra-ordinary jurisdiction.

17. Naturally, in case, suit is decreed in favour of the petitioner, his grievance would cease to exist. In case, such suit is, eventually, dismissed by the learned Trial Court and the plaintiff is compelled to file any appeal, this Court gives him liberty to challenge the order, which is impugned before this Court, by setting forth the same as a ground of objection in the memorandum of appeal. This seems, even otherwise, permissible in terms of Section 105 CPC.

18. The petition stands disposed of in aforesaid terms.

19. Needless to clarify, in view of above peculiar factual matrix, the present order shall not be taken as a precedent.

20. The defendant in the present case had knocked the doors of *Delhi Legal Services Authority* and, though, he, approached such Authority



belatedly, fact remains that any such legal aid counsel is required to act swiftly and is required to ensure that the prescribed time-line is adhered to, which is inflexible. Needless to emphasize, in case, there is any delay in this regard, it can result in serious prejudice to the concerned party.

21. Therefore, a copy of this order be sent to learned Secretary, Delhi State Legal Services Authority with request to sensitize the panel counsel about the aforesaid important aspect so that, in future, no such incident occurs.

(MANOJ JAIN)
JUDGE

JULY 8, 2025/ss/SS