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

+ **CM(M) 324/2025**

MAYANK ADLAKHA

.....Petitioner

Through: Mr. Amit Kumar, Advocate.

versus

ARYA PUBLISHING COMPANY

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **20.02.2025**

CM APPL. 9438/2025 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 324/2025 & CM APPL. 9439/2025 (stay)

1. This is a petition under Article 227 of the Constitution of India, impugning the orders dated 04.12.2024 and 01.02.2025.
2. Petitioner is the defendant in the civil suit bearing No. CS (COMM) 1259/2024, titled as "M/S Arya Publishing Company vs. Mayank Adlakha", filed by the respondent seeking recovery of Rs. 11,12,852/- along with pendentlite interest and future interest.
3. Vide impugned order dated 04.12.2024, the learned trial Court closed the right of the petitioner to file written statement.
4. Petitioner, thereafter, filed an application under Order VIII Rule 1 CPC read with Section 151 CPC with proposed written statement and list of



documents but the said application was dismissed with cost of Rs. 10,000/-. The trial Court observed that petitioner has failed to bring on record anything to show that the order dated 04.12.2024 was passed on account of some mistake or error apparent on the face of the record. According to the trial Court, the pleas taken in the application was sans any explanation. The trial Court was of the view that petitioner is not diligent enough and slept over the matter uptill the final stage.

5. Learned counsel for petitioner submits that he was served with summons through e-mail and whatsapp on 21.11.2024, and therefore, it was pre-mature on the part of the Court to close his right to file written statement on the 14th day from the date of service of summons. It is further submitted that mother of the petitioner had suffered fracture and being the only son, he was looking after his mother and was not in a position to file written statement within the stipulated period of 30 days. It is also submitted that trial Court, while passing the order, ignored the medical certificate dated 09.12.2024, issued by Doctor, which shows that mother of the petitioner had suffered fracture and was advised rest for two weeks.

6. Learned counsel for respondent submits that petitioner did not appear on 04.12.2024 despite service of summons, and therefore, the trial Court was justified in closing his right to file written statement. It is further submitted that petitioner has failed to furnish any explanation in his application under Order VIII Rule 1 CPC for filing written statement with a delay. It is further submitted that Commercial Courts Act provide strict timelines which must be adhered to by the parties and petitioner having not followed the timelines, the learned trial Court has rightly dismissed his application under Order VIII Rule 1 CPC.



7. Having regard to the amendments made in Order VIII Rule 1 and 10 and Order V Rule 1 (1) CPC by the Act 4 of 2016 for suits relating to commercial disputes of specified value, written statement has to be filed within a period of 30 days from the date of service of summons on defendants. On the failure to file written statement within said period, a grace period of further 90 days is granted under the CPC to file written statement, which the Court may grant for reasons to be recorded in writing and on payment of such costs by the defendants, as the Court deems fit.

8. It is evident from the order dated 04.12.2024 that petitioner was served through whatsapp and e-mail on 21.11.2024. The right to file written statement was closed on 04.12.2024 i.e. just after 14 days from the service of summons. The trial Court ought to have waited at least 30 days from the date of service of summons before passing such an order. Even though the petitioner did not appear on 04.12.2024, the Court should not have closed the right of the petitioner to file the written statement in view of the statutory timeline, and therefore, in these circumstances, the impugned order dated 04.12.2024 cannot be sustained and is set aside.

9. Admittedly, the written statement was filed before the Court with a delay of 29 days but within the extended window of 90 days. The explanation given by the petitioner for this delay is that his mother had suffered a fracture on 27.11.2024. That being so, two weeks' rest, as advised by doctor expired on 11.12.2024. It is submitted by learned counsel for petitioner that in the intervening period, the District Courts were closed on account of winter vacation and petitioner was trying to engage an advocate for the said purpose. This is the reason why delay occurred in filing the written statement.



10. Even though the reasons cited by petitioner for delay on 29 days do not appear to be sufficient, keeping in view the fact that the written statement has been filed within the extended window period of 90 days, as provided by the Statute and also the fact that the lis between the parties should be decided on merits, in the facts and circumstances of the case, I deem it appropriate to allow the petition and set aside the orders dated 04.12.2024 and 01.02.2025, subject to payment of additional cost of Rs. 10,000/-. The cost be paid to the respondent before the trial Court along with copy of written statement.

RAVINDER DUDEJA, J

FEBRUARY 20, 2025/vd /ia