



2025:DHC:9512



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

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Date of Decision: 30.10.2025+ **CM(M) 2889/2024 & CM APPL. 38269/2024**

ANIL SHARMA

.....Petitioner

Through: Mr. Bharat Bhushan, Advocate
(through videoconferencing).

versus

AJAY JAIN

.....Respondent

Through: Mr. Sanjay Aggarwal, Advocate.

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioner/defendant has assailed orders dated 23.08.2023 and 15.03.2024 of the learned Commercial Court. By way of order dated 23.08.2023, the Written Statement filed beyond the prescribed period was taken off the record as the same was not accompanied with any application explaining the delay in filing the Written Statement and seeking condonation thereof. By way of order dated 15.03.2024, the application under Section 5 of the Limitation Act filed on behalf of petitioner/defendant was dismissed.

2. Broadly speaking, the relevant circumstances are as follows. Summons of the commercial suit were served on the petitioner/defendant on 28.04.2023 but he filed the Written Statement on 18.07.2023, that too without any application explaining the circumstances, which led to delay in

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filing the Written Statement, and seeking condonation of that delay. Therefore, the learned trial court directed the Written Statement to be taken off the record and adjourned the matter to 09.10.2023. Thereafter, it is only on 27.01.2024 that petitioner/defendant filed an application under Section 5 of the Limitation Act for condonation of delay in filing the Written Statement. That application also was dismissed vide order dated 15.03.2024.

3. Learned counsel for petitioner/defendant contends that the impugned order is not sustainable in the eyes of law because the petitioner/defendant had a fit case for condonation of delay in filing the Written Statement as the summons were served on the petitioner/defendant through his brother. It is further submitted that since courts were on summer vacation and learned counsel himself fell ill, he could not file the application for condonation of delay in time. It is contended that since the Written Statement was filed within the outer limit of 120 days after service of summons, the application for condonation of delay ought to have been allowed.

4. Learned counsel for respondent/plaintiff supports the impugned orders.

5. As mentioned above, summons of the suit were admittedly served on 28.04.2023 on the petitioner/defendant through his brother.

5.1 The provision under Order V Rule 15 CPC clearly stipulates that where in a suit the defendant is absent from his residence at the time when



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service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of summons on his behalf, service of summons may be made on any adult member of the family, whether male or female, who is residing with him.

5.2 Admittedly, brother of the defendant who received the summons of the suit at the residential address of the petitioner/defendant, is an adult member of his family.

5.3 Service of summons having been done on 28.04.2023, statutory period of 30 days to file Written Statement as a matter of right expired on 27.05.2023. But admittedly, no Written Statement was filed till that day. The Written Statement was filed only on 18.07.2023 without any explanation *qua* the delay.

6. The provision under Order VIII Rule 1 CPC as amended by the Commercial Courts Act, clearly stipulates in its proviso that where the defendant fails to file the Written Statement within 30 days of service of summons, he shall be allowed to file the Written Statement on such other day as may be specified by the court for the reasons to be recorded in writing but which shall not be later than 120 days from the date of service of summons. The provision specifically stipulates that on expiry of 120 days from date of service of summons, the defendant shall forfeit the right to file Written Statement and the court shall not allow the Written Statement to be



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taken on record.

7. Contention of learned counsel for petitioner/defendant that the Written Statement was filed within the outer limit of 120 days after service of summons cannot be accepted because when the same was filed, it was not accompanied with an application seeking condonation of delay.

7.1 The expression “*for reasons to be recorded in writing*” used in the amended proviso to Order VIII Rule 1 CPC establishes the significance of a formal application seeking delay condonation, in the sense that while condoning the delay in filing the Written Statement after 30 days of service the court has to record the reasons in writing, which reasons have to be furnished by the defendant by way of an application.

7.2 Further, the expression “*the court shall not allow the Written Statement to be taken on record*” in case the same is filed 120 days after the expiry of service of summons also amplifies the intention of the legislature to ensure strict adherence to timelines in commercial suits. Any interpretation to dilute these expressions would frustrate the very object behind enactment of the Commercial Courts Act.

8. Not a whisper has been advanced from the side of petitioner/defendant as to why an application seeking condonation of delay was not filed immediately after the order dated 23.08.2023, which order categorically observed that the Written Statement filed beyond the



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prescribed period of 30 days after service of summons was not accompanied with an application seeking condonation of delay, so the same cannot be taken on record.

8.1 The submission of learned counsel for petitioner/defendant as regards summer vacation and his illness, fails to convince insofar as the rejection of the Written Statement was on 23.08.2023 (*when there were no vacation*) and illness of learned counsel occurred on 23.02.2024 (*as per medical record Annexure A-6*).

8.2. At this stage, learned counsel for petitioner/defendant also contends that even the respondent/plaintiff was not diligent in pursuing the suit as he took an adjournment on the very first date and thereafter, took time to file the requisite court fees. Even this, to my mind, cannot be a ground falling within the scope of proviso to Order VIII Rule 1 CPC. Besides, this ground appears to have not been taken before the trial court or even in the present petition.

9. It is writ large that the petitioner/defendant was deliberately trying to protract the proceedings in order to frustrate the respondent/plaintiff. Any indulgence in such matters would militate against the very object behind enactment of the Commercial Courts Act which was to expeditiously decide the commercial litigation.

10. In view of the aforesaid, I am unable to find any infirmity much less



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any perversity in the impugned orders, so the same are upheld and the present petition is dismissed. Accompanying application also stands disposed of.

**GIRISH
KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

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