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

% *Date of decision: 29th January, 2024*

+ CS(COMM) 583/2019, I.A. 13046/2021

SPJ CARGO PVT. LTD.

..... Plaintiff

Through: Ms. Shantha Devi Raman and Mr.
Mayank Ranjan Yadav, Advocates

versus

SARAH FOODS

..... Defendant

Through: Mr. Karan Batura and Mr. Jayant
Chawla, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

**I.A.13046/2021 (under Section 151 of CPC on behalf of defendant seeking
Condonation of Delay in re-filing the application seeking Condonation of
Delay in filing the Written Statement)**

1. An application has been filed seeking Condonation of Delay in re-filing the application seeking Condonation of Delay in filing the Written Statement has been filed on behalf of the defendant.

2. **It is submitted in the application** that an application for Condonation of Delay of 12 days in filing the Written Statement was filed on 17.03.2020. The said application was put in objection and was re-filed only on 30.09.2021.

3. It is submitted in the application that the Apex Court in



Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020, 2022 3 SCC 117, had held that in order to obviate the difficulties the period of limitation, irrespective of the period prescribed under General or Special Laws, whether condonable or not, shall stand extended w.e.f 15.03.2020 till 28.02.2022.

4. It is submitted that though the Condonation application had been filed on 17.03.2020, but the defendant came to know about the objections to the Condonation application only in the month of October, 2020 when the documents filed were marked as defective on 19.03.2020. The counsel for the defendant immediately directed the Clerk to collect the documents from the Registry of the High Court for rectification, but on reaching the counter, the documents were not handed over to the Clerk on account of limited number of officials working each day.

5. Thereafter, the Clerk of the counsel was able to collect the files only after persistently following it with the concerned officials. It took some time to consult the defendant for removal of the objections. Finally, the defects could be removed and the application was re-filed on 27.11.2020. It is submitted that the Condonation application along with the Written Statement was re-filed on 27.11.2020. However, the Condonation application could not be traced on record despite the Report being called from the Registry. Eventually, the Condonation application was re-filed by the defendant on 30.09.2021 when it was taken on record.

6. **Submissions heard.**

7. In view of the judgment of the Apex Court in *Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*, the entire period from 15.03.2020 till 29.02.2022 on account of Covid Pandemic has



been excluded from calculating the limitation. Thus, even though the application has been filed after more than one year of initial filing in March, 2020, the entire period falls within the excluded period and the delay is hereby condoned and the application is taken on record.

8. The application is accordingly disposed of.

I.A. 12974/2021 (under Order VIII Rule read with Section 151 CPC on behalf of the defendant)

9. An application has been filed on behalf of the defendant for Condonation of Delay of 12 days in filing the Written Statement.

10. It is submitted in the application vide Order dated 04.12.2019 the present suit was directed to be treated as an Ordinary suit under Order XXXVII of CPC. Thereafter, the plaintiff with the permission of the Court, made amendments in the plaint and the amended plaint was placed on record.

11. On 28.01.2020 the plaintiff was directed to supply deficient copies of the paper-book to the defendant within one week which was supplied on 03.02.2020 and the defendant was required to file their Written Statement within 30 days of receipt of the documents.

12. The accountant of the defendant, who was well versed with the facts of the present case, was affected by the Delhi Riots which took place in February, 2020. He unexpectedly left for his home to his native place. It is only after he returned back to Delhi that the Written Statement could be drafted. However, the 30 day period granted vide Order dated 28.01.2020 commenced on 03.02.2020 and expired on 04.03.2020. There was a delay of 12 days in filing the Written Statement which was filed in the Court on 17.03.2020. A prayer is therefore made that the delay of 12 days be



condoned.

13. **The application is contested by the plaintiff**, who has clarified that though the Written Statement along with an application for Condonation of Delay of 12 days was filed on 17.03.2020 vide Diary No.418322 and 418301, but the same was returned by the Registry because of the defects noted. The re-filing after removing the defects was not done by the defendant for more than eight months.

14. It is asserted that ordinary filing was resumed vide Office Order No.R-195/RG/DHC/2020 dated 08.05.2020 and physical filing of non-urgent/ordinary matters was also resumed vide Office Order No.250/RG/DHC/2020 dated 06.08.2020 despite which the defendant has failed to take any steps to remove the defects raised by the Registry in March, 2020 or to file the Written Statement within the given time.

15. It is further asserted that the re-filing has been done only on 17.11.2020 which is after eight months of the initial filing and after six months of resuming of filing by the High Court. The Written Statement was filed vide Diary No.1127736 of 2020 though without any fresh application for Condonation of Delay. Since the re-filing has been done under a fresh Diary number and not within the time frame, it cannot be considered as a case of re-filing under Delhi High Court (Original Side) Rules, 2018 and the delay has to be calculated viz-a-viz from the date of fresh filing.

16. The fresh Written Statement has been filed beyond the mandatory period of 120 days and the same cannot be permitted to be taken on record for which reliance has been placed on the judgment of the Apex Court in M/s SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors. Civil Appeal No.1638 of 2019; Sagufa Ahmed & Ors. vs. Upper



Assam Plywood Products Pvt. Ltd. & Ors., Civil Appeal 3007-3008 of 2020 decided on 18.09.2020, wherein a clear distinction has been drawn between a period of limitation and a period up to which the delay can be condoned in exercise of discretion conferred by the Statute. Reliance has also been placed on Siddha Real Estate Development Pvt. Ltd. vs. Girdhar Fiscal Services Pvt. Ltd. in CS 245 of 2019 of Calcutta High Court.

17. It is, therefore, submitted that the Written Statement having been filed beyond the statutory period of 120 days, cannot be permitted to be taken on record.

18. **Submissions heard.**

19. As per the submissions of the plaintiff itself, the Written Statement was originally filed on 17.03.2020 along with a Condonation application. However, it was returned on account of defects and was finally filed on 27.11.2020.

20. First and foremost, it may be observed that the Written Statement was originally filed on 17.03.2020, which was though beyond 30 days but was within a period of 120 days. It was duly supported by an application for Condonation of Delay of 12 days. The Written Statement was therefore, filed within the extended time frame that can be granted under the Proviso to Order VIII Rule 1 CPC.

21. Unfortunately, because of the objections raised by the Registry, the Written Statement was returned and was thereafter, filed only on 27.11.2020 when it was sought to be taken on record. The objection taken on behalf of the plaintiff is that it being beyond the mandatory period of 120 days, there is no discretion with the Court to extend the period for filing the Written Statement.



22. Though, these arguments in the first instance may look attractive, but it misses the point that the Written Statement originally was filed within the given time frame. The plaintiff has placed reliance on *Chapter VI Rule 3 of the Delhi High Court (Original Side) Rules, 2018* which provides that consecutive re-filings must be within a seven day limit and the multiple re-filings must not exceed a thirty day aggregate. This being a case of more than eight months, the filing on 27.11.2020 has to be necessarily taken as a case of fresh filing.

23. Reference may be made to *Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*, 2022 3 SCC 117, wherein the Supreme Court has expressly excluded the period from 15.03.2020 to 28.02.2022 for the purpose of calculating the limitation.

24. The Written Statement has been filed during the year 2020 which was when the Covid pandemic was at its peak. The Registry may have opened from time to time, but the fact remains that this period in calculating the limitation, stands excluded by the Order of the Apex Court.

25. Therefore, even if the arguments of the plaintiff that the objections raised by the Registry to the re-filing, should have been removed within seven days was to be accepted, then too in view of the express Order of the Apex Court excluding this period for calculating limitation, the benefit of this period has to inure to the defendant.

26. It is, therefore, held that the Written Statement has been filed within the statutory period of 120 days. The Written Statement be taken on record.

27. The application is accordingly disposed of.



2024: DHC: 879



CS(COMM) 583/2019

28. List before learned Joint Registrar for completion of pleadings on 04.03.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 29, 2024/va