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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 105 OF 2024

Federal Brands Ltd., A Company incorporated under the Companies Act, 1956, with its registered office at Shri Guru Gobindsing Indlpremises Co-op. Soc., Western Express Highway, Goregaon, Mumbai, Maharashtra – 400 063. Through its Authorized Signatory, Rajashekar T.

... PETITIONER

Versus

Cosmos Premises Pvt. Ltd., A Company incorporated under the Companies Act, 1956, with its registered office at 183/2, Francisco Pereira Waddi, Utorda, Salcete, Goa – 403 713.

... RESPONDENT

Mr. S.N. Joshi with Ms. Swapna Joshi, Advocates for the Petitioner.

Ms. Maria Viegas, Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 2nd AUGUST 2024

ORAL JUDGMENT:

1. Heard Mr. Joshi for the Petitioner and Ms. Viegas for the Respondent.

2. Rule. Rule made returnable forthwith.

3. Heard finally with consent of parties.

4. The challenge in the present Petition is to the order passed by the learned Trial Court dated 11.12.2023, thereby rejecting the Application for condonation of delay in filing the written statement.

5. Mr. Joshi appearing for the Petitioner would submit that the Petitioner is the Defendant who received a summons from the Trial Court in a suit filed by the Respondent/Plaintiff on 18.08.2022. The Defendant appeared before the Trial Court and sought an extension of time to file a written statement, which was granted. He submits that thereafter, the Petitioner filed an Application under Order VII Rule 11 of CPC on 05.11.2022. Such Application was heard and decided by the Trial Court on 09.02.2023. Upon rejection of such Application, the Petitioner filed an Application for condonation of delay on 03.03.2023 together with a written statement to be taken on record. An additional affidavit in support of the Application for condonation of delay was filed on 27.06.2023. Vide impugned order dated

11.12.2023, the learned Trial Court rejected the delay Application, which is challenged in the present Petition.

6. Mr. Joshi appearing for the Petitioner would submit that the provisions of Order VIII Rule 1 of CPC are directory and not mandatory and therefore, the time limit mentioned therein could be condoned. In this respect, he placed reliance on the decision of the Apex Court in the case of **Raj Process Equipments and Systems Pvt. Ltd. & Others Vs. Honest Derivatives Pvt. Ltd., 2022 SCC OnLine SC 1877**, apart from the judgments referred to and considered by the Trial Court in the impugned order.

7. Mr. Joshi would submit that the Petitioner/Defendant has a strong case in his defence and if opportunity is denied for filing the written statement, serious prejudice would be caused. He submits that the Petitioner is ready to deposit costs for condonation of delay and no prejudice will be caused to the Plaintiff/Respondent.

8. The learned Counsel for the Respondent while justifying the orders passed by the Trial Court would submit that the observations in the impugned order clearly go to show that the

reasons for condonation of delay are not at all justifiable and that such delay was deliberate.

9. It is clear from the chronology of dates which have been pointed out by Mr. Joshi that summons were served on Defendant on 18.08.2022 whereas the period of 30 days to file a written statement expired on 17.09.2022. The Petitioner/Defendant also applied for an extension of time to file the written statement which was initially granted. However, instead of filing the written statement, though time was extended, an Application under Order VII Rule 11 of CPC for rejection of the plaint was filed. It is necessary to note here that along with such an Application for rejection of the plaint, the Petitioner/Defendant could have easily filed the written statement. However, the reasons disclosed in the Application for condonation of delay show that the in-house Advocate advised the Petitioner/Defendant that once an Application under Order VII Rule 11 of CPC is filed, there is no need to file a written statement till such Application is decided. The Petitioner was also advised that there would not be any need to file any written statement since the plaint would be rejected. This is the only reason which is disclosed in the Application for condonation of delay in filing the written statement.

10. The calculations shown for delay in the Application for condonation of delay in filing the written statement are also not correct. The reasons disclosed in paragraphs 2 to 6 of the delay Application read thus:

- “2. *The Defendant filed Application for Rejection of Plaintiff on 03/11/2022. The same has been rejected by this Hon’ble Court by an Order dated 9th February, 2023. The Defendant would consider challenging the said Order before the appropriate Court of law.*
3. *In the meantime, the Defendant wishes to file the Written Statement in defence of the suit.*
4. *In view of Order VII Rule 11 Application, the Defendant is entitled for the exclusion of the period from 03/11/2022 (the date the Application under Order VII Rule 11 was filed) to 09/02/2023 (the date wherein the said Application was rejected).*
5. *In case, the Application under Order VII Rule 11 was allowed by this Hon’ble Court, the Defendant was not required to file any Written Statement. The necessity to file the Written Statement has arisen only as the Application has been rejected by this Hon’ble Court.*
6. *As the Defendant has served on 18/08/2022, it was entitled to file the Written Statement within 90 days, I.e. on or before 16/11/2022. Considering the exclusion of 110 Days (pendency of Application under Order VII Rule 11), there is still delay of 14 days in filing the Written Statement.”*

11. The reasons disclosed in the above Application for condonation of delay would clearly go to show that the Defendant claimed that once an Application is filed under Order VII Rule 11 of CPC, the period for filing the written statement stands excluded, till the Application is decided.

12. There is no such provision in the CPC or any pronouncement of the Court for the purpose of exclusion of such period for filing the written statement. The provisions of Order VIII Rule 1 of CPC would show that the written statement is required to be filed within a period of 30 days, which is from the date of receipt of the suit summons. The proviso added by the amendment Act would go to show that the said period could be extended upto 90 days from the receipt of the summons for reasons to be recorded in writing. Thus, it is clear that the written statement is required to be filed within 30 days from the date of receipt of the suit summons, however, such period of 30 days could be extended upto 90 days for the reasons to be recorded in writing by the Court.

13. In the present matter, admittedly, the written statement was not filed within 30 days. Only an Application was filed for extending the said period which was allowed. On the next date, no

written statement was presented to the Court. No Application for further extension of time to file the written statement was filed before the Court. Thus, there was no reason for the Court to extend such time to be recorded in writing.

14. It is no doubt true that the provisions of Order VII Rule 1 of CPC are not mandatory but directory, however, such discretion is required to be exercised by the Court on disclosing sufficient reasons for an extension of time.

15. The CPC nowhere provides that on filing a Miscellaneous Application, the time to file the written statement would be extended or excluded. Similarly, the Defendant claimed in the Application for condonation of delay that the period during which the Application under Order VII Rule 11 was pending, is entitled to be excluded and thus, the delay according to the Petitioner/ Defendant was calculated as only 14 days. Such calculation is completely on wrong advise or presumption. The written statement was filed after a period of 160 days along with the Application for delay wherein there are no sufficient reasons disclosed to exercise the discretion of the Court by condoning the delay. In the case of **Raj Process Equipments and Systems Pvt. Ltd.** (supra), the Apex Court has observed that the

provisions of Order VIII Rule 1 of CPC are directory and not mandatory, however, there is no discussion with regard to the fact as to whether there were any sufficient reasons disclosed to condone the delay in filing the written statement.

16. In the present Petition, this Court while exercising supervisory jurisdiction under Article 227 of the Constitution is required first of all to ascertain whether the impugned order suffers from any illegality or otherwise. If such an aspect is not examined, this Court will not be in a position to upset the reasoned order only on the ground that the Petitioner/Defendant will lose his opportunity to file a written statement and is entitled to pay costs. Ignorance of law or wrong advise is not sufficient ground, when no affidavit of in-house Advocate is placed on record to justify such reason. Blaming an Advocate is not proper when such Advocate is having no opportunity to defend or to explain.

17. The impugned order dated 11.12.2023 is well-reasoned order after taking into consideration the relevant decisions with regard to Order VIII Rule 1 of CPC. The learned Trial Court has specifically observed that the grounds mentioned for condonation of delay are not at all sufficient enough to use the discretionary

power. No fault would be attributed to such findings. Accordingly, there is no substance in the present Petition and no reason to disturb the findings of the learned Trial Court.

18. The Petition stands dismissed. No costs. Rule stands discharged.

BHARAT P. DESHPANDE, J.