

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

Reserved on: 30th May, 2022

Date of decision: 05th July, 2022

+ **CS(COMM) 144/2019 & IAs 4095/2019, 9172/2019**

3M COMPANY

..... Petitioner

Through: Mr. Peeyoosh Kalra, Mr. Amol
Dixit, Mr. Rohan J.Kapoor, Advs.

versus

MR. VIKAS SINHA & ANR

..... Defendants

Through: Mr. Rohit Gandhi & Mr. Hargun
Singh Kalra, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

O.A.No.17/2022

1. By this appeal, the defendants/appellants are challenging the order dated 21.03.2022 passed by the learned Joint Registrar (Judicial) in I.A. No. 16400 of 2019 dismissing the said application filed by the defendants/appellants, seeking condonation of delay in filing of the written statement.

Factual Background

2. Before advertng to the submissions made by the learned counsels for the parties, certain important dates would need reference to:

2.1 This Court, vide its order dated 19.03.2019, was pleased to issue summons to the defendants in the suit, while granting an *ad-interim* injunction in favour of the plaintiff restraining the defendants from using the plaintiff's trade/service marks/ name ^{3M/}**3M** and/or any mark deceptively similar thereto. This Court was also pleased to appoint Local Commissioner(s) to visit the premises of the defendants and carry out the mandate of the commission as given in the said *ad-interim* order.

2.2 The Local Commissioner(s) executed the commission on 27.03.2019.

2.3 The defendant nos. 1 and 2 were formally served with the summons on 22.04.2019, while the defendant no. 3 was served with the summons on 23.04.2019.

2.4 The defendants filed an application, being I.A. No. 9172 of 2019 dated 10.07.2019, praying for an order of injunction under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC') restraining the plaintiff from approaching and/or writing and/or communicating to the car manufacturers, authorized car dealers, car detailing centres, workshops and other dealers making or purporting to make wrongful representations against the defendant no. 1 which could cause damage to the reputation and goodwill of the defendant no. 1 or disparage the business of the defendant no. 1 in any manner, during the pendency of the present suit.

2.5 The defendants thereafter filed their written statement on 19.08.2019, that is, on the 118th day of service of summons.

2.6 The suit was listed before the learned Joint Registrar (Judicial) for further proceedings on 20.08.2019, when it was pointed out to the learned counsel for the defendants that the written statement, the affidavit of admission/denial of the plaintiff's documents, and the documents filed were not on record. The statement of the learned counsel for the plaintiff was also recorded to the effect that the written statement had not been filed within the statutory period. On this submission, the learned counsel for the defendants sought time for filing an appropriate application seeking condonation of delay in filing of the written statement.

2.7 The learned counsel for the defendants/appellants submits that the office objection on the written statement was finally raised by the Registry of this Court on 15.11.2019, and the said written statement was returned under objection to the defendants/appellants only on 18.11.2019. The same was immediately thereafter re-filed on 20.11.2019, and an application seeking condonation of delay in filing of the written statement, being I.A. No. 16400 of 2019, was separately filed on 21.11.2019.

2.8 The application seeking condonation of delay has been dismissed by the learned Joint Registrar (Judicial) by way of the impugned order dated 21.03.2022 on the ground that when the written statement was filed by the defendants in the suit on the 118th day of service of summons, no application for condonation of delay was filed with it. The application for condonation of delay was filed only on 21.11.2019, after an objection had been raised by the Registry of this Court. The same having not been filed within the statutory period of 120 days prescribed under the Commercial Courts Act, 2015 (in short, 'Commercial Courts Act'),

therefore, was not maintainable in law and the defendants/appellants have forfeited their right for filing the written statement. In reaching the above conclusion, the learned Joint Registrar (Judicial) placed reliance on the judgment of this Court in *Ok Play India Pvt Ltd. v. A.P. Distributors and Another*, 2021 SCC OnLine Del 4043, and on the judgment of the Supreme Court in *SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited and Others*, (2019) 12 SCC 210.

Submissions on behalf of the defendants/appellants:

3.1 The learned counsel for the defendants/appellants submits that the ratio of the judgment in *Ok Play India (supra)*, insofar as it held that a written application supported by an affidavit is a must for seeking condonation of delay in filing of the written statement, is *per incuriam*. Placing reliance on the judgment of the Supreme Court in *Sesh Nath Singh and Another v. Baidyabati Sheoraphuli Cooperative Bank Limited and Another*, (2021) 7 SCC 313, he submits that, in fact, it is not mandatory to file an application in writing before relief under Section 5 of the Limitation Act, 1963 (in short, 'the Limitation Act') can be granted to the applicant and had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so.

3.2 Further, placing reliance on the judgment of this Court in *Ravindra Jain v. Natraj Albums Industries (Pvt) Ltd.*, 1996 SCC OnLine Del 737, he submits that such an application under Section 5 of the Limitation Act can also be filed later, and it is not necessary that such an application must be filed only along with the written statement. The subsequent filing of the application seeking condonation of delay shall relate back to

the date of filing of the written statement. In support of the said proposition, he further places reliance on the decision of this Court in *State v. Vijender Singh & Ors.*, 2006 (91) DRJ 567 (DB), as well as the decision of the High Court of Calcutta in *State of West Bengal v. Nripendra Nath Banerjee*, AIR 1992 Cal 179.

3.3 Placing reliance on the judgment of the Supreme Court in *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited.*, (2021) 6 SCC 460, he submits that merely because the present suit is a commercial suit, it cannot be said that Section 5 of the Limitation Act would not have any application or would have a restricted application. He submits that therefore, the principles that are applicable to Section 5 of the Limitation Act must be applied while considering the application of the defendants/appellants seeking condonation of delay in filing of the written statement in the suit.

3.4 The learned counsel for the defendants/appellants, further placing reliance on the judgment of this Court in *Red Bull AG v. Pepsico India Holdings Pvt. Ltd. and Another*, 2019 SCC OnLine Del 9901, submits that this Court, in fact, can condone the delay in filing of the written statement even when no application seeking condonation of delay is filed by the defendant.

3.5 The learned counsel for the defendants/appellants further submits that the written statement and the application seeking condonation of delay in filing of the same were filed prior to the judgment of this Court in *Ok Play India (supra)*. He submits that therefore, the said judgment can have no effect on the consideration of the application of the

defendants/appellants. He submits that, in fact, the same learned Single Judge who passed the judgment in *Ok Play India (supra)*, in a later judgment dated 27.09.2021 passed in CM(M) 335 of 2021, titled *Superior Aircon Pvt. Ltd. v. National Building Construction Corporation*, opined that the judgment in *Ok Play India (supra)* cannot be used to re-open the decision condoning the delay in filing of the written statement passed earlier thereto. He submits that merely because the application of the defendants/appellants seeking condonation of delay in filing of the written statement had remained pending, the defendants/appellants cannot be denied a similar benefit as granted in *Superior Aircon Pvt. Ltd. (supra)*.

3.6 On merits, the learned counsel for the defendants/appellants submits that in the present case the delay in filing of the written statement occurred because the suit was filed by the plaintiff without impleading its Indian subsidiary, with whom the defendants had business dealings since 2012; the defendant no. 1 being its authorized distributor. The agreements and the records between the parties were old and voluminous, thus took a substantial amount time to collect. Further, on receipt of summons, the defendants, in order to understand and resolve the issue met the officers of the plaintiff and their counsel. As the same did not materialize, the defendants/appellants engaged a counsel to defend them in the present suit. A further delay was attributed to the commencement of the Court Vacation, not permitting the defendants to be able to get in touch with their counsel. He submits that therefore, the defendants/appellants were entitled to condonation of delay in filing of the written statement.

Submissions on behalf of the plaintiff:

4.1 On the other hand, the learned counsel for the plaintiff submits that the application seeking condonation of delay, having been filed beyond 120 days of service of summons on the defendants/appellants, has been rightly dismissed by the learned Joint Registrar (Judicial). He submits that the judgment of *Ok Play India* (*supra*) has also been relied upon by another learned Single Judge of this Court in the decisions in *Intiyaz Sheikh v. Puma Se*, 2021 SCC OnLine Del 4679 and *Rachna Overseas v. Printech System*, 2021 SCC OnLine Del 5332, which in fact rejected the arguments similar to those now raised by the learned counsel for the defendants/appellants.

4.2 Placing reliance on the judgment dated 30.08.2016 of this Court in CS(OS) 3355 of 2015, *Gulf DTH FZ LLC v. DishTV India Ltd. & Others*, he submits that the mandate and object of the Commercial Courts Act cannot be defeated by belatedly filing an application seeking condonation of delay. He submits that this Court had earlier also observed that the written statement filed belatedly and beyond the period of 30 days must be accompanied with an application seeking condonation of delay. He submits that the Supreme Court in *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, (2020) 15 SCC 585, has held that the provisions of the Commercial Courts Act must not be given a liberal interpretation. They should not be hampered by the usual procedural delays plaguing our traditional legal system.

Consideration of the submissions:

5.1 I have considered the submissions of the learned counsels for the parties. Though I have my doubts on the law declared by this court in *Ok*

Play India (supra); that an application seeking condonation of delay in filing written statement, where such application is filed beyond 120 days of receipt of summons from the suit, cannot be considered; and that a written application is a must for seeking condonation of delay in filing of a written statement, in the facts of present case, I need not consider this issue in detail as I am of the opinion that even otherwise, the defendants/appellants have not been able to make out any case for the grant of condonation of delay in filing of their written statement.

5.2 The object and purpose of the Commercial Courts Act is to ensure that the commercial cases are disposed of expeditiously, fairly and at a reasonable cost to the litigant. The Commercial Courts Act was enacted with the intent to improve the efficiency and reduce delays in disposal of commercial cases.

5.3 Section 16 of the Commercial Courts Act makes an amendment to the CPC in its application to commercial suits of a specified value. One such amendment is in Order VIII Rule 1 and Order VIII Rule 10 of the CPC. These provisions, as applicable to commercial suits of a specified value, read as under:-

“ **ORDER VIII**
WRITTEN STATEMENT, SET-OFF AND
COUNTER-CLAIM

1. Written Statement. – *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems

fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

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10. Procedure when party fails to present written statement called for by Court.-- *Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.*

Provided that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

5.4 In ***SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited & Ors., (supra)***, the Supreme Court summarised the effect of the above provisions as under:-

“A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”

5.5 Therefore, the Commercial Courts Act brings about a substantial change in the provisions relating to the period of filing of the written statement and the power of the Court to condone the delay in filing of the written statement as far as the commercial suits are concerned.

5.6 In the present case, the written statement was filed on the 118th day from the date of service of summons on the defendants/appellants. It was not accompanied with an application seeking condonation of delay in filing of the same. In fact, on 20.08.2019, the learned counsel for the plaintiff warned the defendants/appellants that the written statement was not on record as it was not accompanied with an application seeking condonation of delay. The learned counsel for the defendants/appellants, instead of giving any reason on the basis of which the defendants/appellants could seek condonation of delay, prayed for time to file an appropriate application in that regard. The order dated 20.08.2019 passed by the learned Joint Registrar (Judicial) is reproduced hereinbelow:

“ It is submitted by counsel for the defendants that the defendants have filed written statement, affidavit of admission/denial of the documents and documents yesterday vide diary no. 809003, 809088 & 809042. However, the same have not come on record. Counsel for the defendants seeks time for taking appropriate steps in this regard.

It is submitted by counsel for the plaintiff that the defendants have not filed written statement within statutory period. It is submitted by counsel for the defendants that the written statement could not be filed within 30 days but the same has been filed within the period of 120 days. Counsel for the defendants seeks time for filing appropriate application for condonation of delay in filing the written statement.

At joint request, re-notify the matter for further proceedings on 10th December, 2019.”

5.7 Even thereafter, the defendants/appellants did not file any application seeking condonation of delay in filing of their written statement, till 21.11.2019. The submission of the learned counsel for the defendants/appellants that the same was filed only when the Registry of this Court returned the written statement under objection on 18.11.2019, to say the least, is the most fallacious and reflects the callous manner in which the defendants/appellants have tried to defend the suit filed by the plaintiff. The defendants/appellants, already having been warned that their written statement would not come on record for there being no application seeking condonation of delay in filing of the same, were not expected to await the return of the written statement by the Registry of this Court. On their own, they were supposed to file an application seeking condonation of delay so that their written statement could be brought on record. Clearly, the defendants/appellants were trying to take advantage of the process of the Court and delay the adjudication of the present suit. To accept the same would be to defeat the very object and purpose of the Commercial Courts Act.

5.8 As rightly held in *Ok Play India (supra)*, delay in filing of the written statement can be condoned by the court “*for reasons to be recorded in writing*”. Such reasons cannot be presumed by the Court, but are to be provided by the defendants. The defendant cannot take its own sweet time to supply such reasons to the court. The court is not to await endlessly for the same.

5.9 Even otherwise, the reasons given by the defendants/appellants for seeking condonation of delay in filing of their written statement cannot be accepted. It is contended that the delay occurred as the defendants/appellants applied for and were supplied with the copy(ies) of the report(s) of the Local Commissioner(s) only on 31.07.2019. As noted hereinabove, the commission was executed on 27.03.2019 in the presence of the representative of the defendants/appellants. The application seeking condonation of delay in filing the written statement does not disclose what steps were taken by the defendants to seek copy(ies) of the report(s) of the Local Commissioner(s) earlier and, in any case, how the non-availability of the same hampers the filing of the written statement in time by the defendants in the suit. In fact, as noted hereinabove, the defendants/appellants had filed another application, being I.A. No. 9172 of 2019, on 10.07.2019 seeking an order of injunction against the plaintiff. It is not explained why the written statement was not filed even at that stage. The submission of the defendants/appellants that the delay occurred as they were first trying to get the dispute amicably resolved; or in locating and contacting their counsel; and/or in compiling the documents and records of their past dealings with the Indian subsidiary of the plaintiff, again does not give sufficient justification to the defendants for not filing the written statement within the statutory period.

5.10 For the above reasons, even otherwise, the defendants/appellants were not entitled to the condonation of delay in filing of the written statement and the same has been rightly rejected. The judgments referred to by the learned counsel for the defendants/appellants cannot come to

the aid of the defendants/appellants in the facts of the present case as they have no application thereto.

Relief:

6. In view of the above, I find no merit in the present appeal. The same is dismissed. There shall be no order as to cost.

CS(COMM) 144/2019 & IAs 4095/2019, 9172/2019

List before Joint Registrar (Judicial) for further proceedings on 19th September, 2022.

NAVIN CHAWLA, J

JULY 5, 2022/Arya/AB/DJ

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