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

% *Date of Decision: 15.09.2025*

+ **CM(M) 1806/2025, CM APPL. 58071/2025 & 58070/2025**

SH. KEWAL KRISHANPetitioner

Through: Mr. Vijay Kinger and Mr.
Digvejender Sharma, Advocates

versus

SH. GULSHAN KUMAR & ORS.Respondents

Through: None

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. The petitioner (*defendant no.1 in suit*) has assailed order dated 22.07.2025 of the learned trial court, whereby his application seeking recall of order dated 01.04.2025 (*closing his right to file Written Statement*) and application under Order VIII Rule 1 CPC seeking condonation of delay in filing the Written Statement were dismissed.
2. Having heard learned counsel for petitioner, I do not find it a fit case to issue notice.
3. Broadly speaking, circumstances relevant for the present purposes are as follows. In the suit filed by the present respondent no. 1 against the



petitioner and the remaining respondents for declaration, injunction and other reliefs, the present respondents no.2-4 were proceeded *ex-parte* while the present petitioner opted not to file Written Statement within time prescribed by law, so right to file Written Statement of the petitioner (*defendant no. 1*) was closed on 01.04.2025. Thereafter on 01.05.2025, petitioner filed an application for recall of order dated 01.04.2025 alongwith an application under Order VIII Rule 1 CPC. Both those applications were dismissed by the learned trial court by way of the impugned order.

4. Learned counsel for petitioner contends that since the Written Statement was brought within 120 days of service of summons, the trial court ought to have taken a lenient view and ought to have condoned the delay in filing the Written Statement. It is also explained by learned counsel for petitioner that since the petitioner had applied for certified copies pertaining to another litigation, which record was relevant for preparing the Written Statement, the delay ought to have been condoned. No other argument has been advanced.

5. In the impugned order, the learned trial court observed that the issue regarding time taken to obtain copies of the other litigation was dealt with in order dated 01.04.2025 and there being no error apparent on the face of record or any additional fact, which the petitioner could not gain knowledge of despite diligence, there was no occasion to review order dated 01.04.2025. The learned trial court also took a view in the impugned order that the plea regarding the other litigation was merely a ruse to escape the consequence of delayed filing of the Written Statement.



6. Admittedly, the present petitioner was served with summons on 19.12.2024 and the statutory period to file Written Statement as a matter of right expired on 18.01.2025. Even the period extendable vide proviso to Order VIII Rule 1 CPC to 90 days from service of summons expired on 18.03.2025, but the Written Statement was not filed. It is trite that even 90 days after service of summons, the court is not powerless to condone delay in filing the Written Statement, but that has to be done only in exceptional circumstances.

7. In the present case, the circumstances set up by the petitioner to explain delay beyond 90 days from service of summons in filing the Written Statement is that petitioner had to obtain certified copies of documents from another litigation, which documents would show that the plaintiff no. 1 and plaintiff no. 2 did not have good relations, so there was no question of plaintiff no. 2 appointing the plaintiff no. 1 as attorney for the suit. Those documents were at the most a piece of evidence and not the facts to be pleaded in the Written Statement. The petitioner could have pleaded only to the extent that plaintiff no. 1 was not a lawful attorney of plaintiff no. 2 for filing of the suit. Besides, nothing prevented the present petitioner from taking inspection of the documents of the other suit in order to ensure that the Written Statement was filed in time, instead of waiting for certified copies. That being so, I am in absolute agreement with the learned trial court that the exercise of obtaining certified copies of the other litigation was only a ruse. In other words, this cannot at all be taken as exceptional circumstance to explain the delay in filing the Written Statement.



8. The purpose of the above discussion in the absence of challenge to order dated 01.04.2025 is limited to the scope of the review jurisdiction. Going by the above discussion, it cannot be said that the learned trial court in the impugned order wrongly observed it to be not a case of error apparent on the face of record or any additional fact which came to the petitioner's knowledge belatedly despite due diligence.

9. I am unable to accept the argument of learned counsel for petitioner that for condonation of delay in filing the Written Statement the courts must take lenient view. Such an approach would make the provisions under Order VIII Rule 1 CPC completely *otiose* and frustrate the basic purpose behind amendment of Civil Procedure Code, carried out in the year 2002. The legal position *qua* approach of the trial court while dealing with an application under Order VIII Rule 1 CPC has already been described above.

10. I am unable to find any infirmity in the impugned order, so the same is upheld and the present petition and the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 15, 2025/as