

IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. NO. 16917 OF 2011

IN

CS (OS) NO. 1431 OF 2011

Nitin Jain & Anr.

...Plaintiffs

Versus

Pie Education
(A Unit of Axis Institute of Learning
Pvt. Ltd.) & Anr

...Defendant

**REJOINDER TO THE REPLY CUM OBJECTIONS FILED BY
THE DEFENDANT TO THE APPLICATION UNDER ORDER 8
RULE 1 AND RULE 10 READ WITH SECTION 151 CPC FOR
STRIKING OF DEFENCE OF DEFENDANT AND FOR
PRONOUNCEMENT OF JUDGEMENT AND DECREE OF THE
PLAINTIFFS**

RESPECTFULLY SHOWETH

PRELIMINARY OBJECTIONS

1. It is submitted that the Defendants had not at all given any reasonable and genuine reason in its reply to the application of the plaintiff and rather had placed blame for late submission of the written statement on the plaintiffs and the Hon'ble Court. In the reply, they have only contended which was very surprising that since the plaintiffs did not deposit full court fees, hence plaintiff had no right to move the application under Order 8 Rule 1, whereas till that time, the plaintiffs had paid the full fees on record and the liability to file written statement was an independent statutory liability which is not based on any other fact such as non deposit of court fee by the plaintiff, hence the contention of the defendant is totally merit less and untenable. The other contention of the defendant is that they could not file the written statement due to the disruption caused by the bomb blast at High Court on 07-09-2011, whereas they could have filed the same any day prior or after the said date with an advance copy to the plaintiffs which they did not do. Bomb blast at the Gate of the High Court is not a reasonable ground for not filing the written statement in the stipulated time.

2. The Hon'ble Supreme Court has categorically observed in various cases that extension of time in filing written statement can be granted for reasons put in writing. The defendant has given no plausible reasons whatsoever for not filing written statement within time. No cogent reasons are given for not filing the written statement as per time schedule.
3. In the case of M/s Aditya Hotels (P) Ltd vs Bombay Swadeshi Stores Ltd. and Ors on 26.3.2007, the Hon'ble Supreme Court had held that the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel.
4. In the case of R.N. Jadi and Brothers and Ors. v. Subhaschandra, the Hon'ble Supreme Court and in the case of Atul Goel vs Raghubir decided on 14 March, 2008 the Hon'ble Delhi High Court held as under:

A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to

the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the Court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carrying forward the legislative intent of avoiding delays or at least in curtaining the delays in the disposal of suits filed in court. The lament of Lord Denning in *Allen v. Sir Alfred MacApline and Sons* (1968) 2 QB 229 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times'

REJOINDER ON MERIT

The defendants failed to file parawise reply/reply on merit to the application of the plaintiffs hence the plaintiffs are filing rejoinder to the paras of the reply as they are.

1. The contents of this para of the reply are baseless and hence denied. The defendants did not choose to file written statement in the period granted under statue and even did not like to file an application for extension of time for filing the same, therefore, it is failed to understand that how the application of the plaintiffs is based on false and vexatious facts. The defendants filed the aforementioned reply after a great delay of 160 days from the date of service of notice of the plaint which is nothing but a tactic to delay the proceedings and as such the reply filed by the defendants after a delay of 160 days should not be taken on record.
2. The contents of this para of the reply are frivolous and untrue and hence denied. It is denied that the office of the answering defendants

was shifted or disturbed due to frequent change of administration as the defendants failed to mention that office was shifted from which place to which place and what administrative change had been occurred in the office, which officer shifted from one place to other. Even it is not clear that whether the office of the defendants was shifted or the administration was disturbed due to frequent change of officers. It is submitted that the office of the defendant is still at the same address and the main officials are also the same, therefore, the contention of the defendant is false on the face of it. It is further submitted that suppose but not admitted that the contention of the defendant is correct, it could not take period of more than 5 months. More so even Shri Baldev Yadav was authorised vide resolution dated 15.10.2011 i.e. after a great delay of 120 days of service of notice. Therefore, it is apparent that the defendants not at all interested to file the written statement and thus miserably failed to put a reasonable cause to not to file written statement within 30 days of service. Order 8 Rule 1 CPC is a mandatory provision and liberty can not be given to the defendants as per their conveniences. Order 8 Rule 1 CPC provides that the written statement should be filed within 30 days from the date of service of summon and the period may be extended up to 90 days by the Hon'ble Court only in the exceptional circumstances and only in the circumstances when some plausible reasons may be put by the defendant in not filing the written statement within 30 days. Whereas there is no plausible reason put by the defendants to avail the discretion of the Hon'ble Court. It is further submitted that there is no bar to move an application for seeking extension of time in filing written statement between the dates. The said application can be filed on any date by the defendants and there is no such requirement that the same may be filed only on the date fixed. The said plea is absolutely a lame and vexatious plea. It is also submitted that it is also not required to file the written statement only on the date fixed. These kinds of pleas and explanation in not filing the written statement are unaccepted as they are far from reasonableness and it appears that in fact the defendants are taking this Hon'ble Court as a granted. Their understanding as it seems is that in most of the cases the Hon'ble Court condone the delay in filing the written statement, therefore, any false plea is acceptable by this Hon'ble Court. It is further submitted that the statement made by

the defendant that they have already filed the written statement is also a completely false statement as they supplied the copy of the written statement only on 24.11.2011 to the counsel for the plaintiffs in the presence of plaintiff no.2 along with the present reply hence making statement that they have already filed the written statement is false on the face of record and the defendants should be dealt with strictly as they don't bother the authority of this Hon'ble Court. It is further submitted that admittedly Shri Baldev Yadav had been authorized to engage an advocate and do all the necessary acts with respect to this case vide resolution dated 15.10.2011 whereas surprisingly he signed the vakalatnama of the present advocate in the first week of September, 2011 meaning thereby that at that time of engaging the present counsel Shri Baldev Yadav had no authority to engage the counsel and suppose but not conceded that the action of Shri Yadav had been validated by the competent authority later on what prevented the defendants or their counsel to file written statement even just thereafter and the same is now filed on 24.11.2011 i.e. around 80 days and that too without any application for condonation of delay.

3. The contents of this para are again false and baseless hence denied. It appears that the counsel for the defendants did not inspect the file of the Hon'ble Court and so also the application moved by the plaintiffs with advance copies to the defendants. Complete court fee had already been deposited in the Hon'ble Court. In any case the defendants must aware with the law that the court fee is the matter solely between the Hon'ble Court and the plaintiffs and defendants can not take a plea that due to the matter of court fee they did not file their written statement.
4. The contents of this para of the reply are again false and baseless and the plaintiffs refer to and reply upon the foregoing submissions in this regard.
5. The contents of this para of the reply do not have any merit and in view of the foregoing submissions the written statement of the defendants which was filed without permission of this Hon'ble Court and even without any application for condonation of delay, should not be taken on record and also with a serious delay of 160 days from service. The defendants have not put even a single reasonable cause or basis

which can satisfy the requirement of Order 8 Rule 1 of CPC hence the written statement filed by the defendants without the permission of this Hon'ble Court should not be taken on record and their right to file the same should be forfeited and this Hon'ble Court should pronounce judgement against them in accordance with the Order 8 Rule 10 CPC. It is further submitted that the Hon'ble single bench as well as Division Bench of this Hon'ble Court had already settled the law that no body can commercially exploit the name and fame of the plaintiff no. 1 whereas the defendants were doing the same hence the plea of the defendants that the case of the plaintiffs is based on false and vexatious facts and defendants have every hope of success of the case is false and liable to be rejected. No defence is available to the defendants. They had not right to use the name of the plaintiff no.1 in their advertisements.

In view of the foregoing the reply/objections of the defendants should be rejected and it is again prayed that the written statement as filed by the defendants without the permission of this Hon'ble Court after a considerable delay of 160 days and even without any application for condonation of delay should not be taken on record and defence of the defendants is liable to be struck off and this Hon'ble Court should pronounce judgement against them in accordance with the Order 8 Rule 10 CPC. The delay in filing the written statement by the defendants is intentional, deliberate and not bonafide.

(PLAINTIFFS No.1 and 2)

Through

(R.K. SAINI, PUNEET VERMA & KIRAN DHARAM)
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New Delhi
Dated:

