

\$~1

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) 297/2013
SMT ASHRAFI & ORS

..... Appellants

Through : Mr. Sanjay Dubey, Adv.

versus

SH RAVINDER

..... Respondent

Through : Mr. Rajesh Lathigaza, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 18.07.2013

CM 9649/2013(exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

FAO(OS) 297/2013 & CM 9648/2013(condonation of delay)

Counsel for the plaintiff who had appeared in the suit, is present.

The present appeal is directed against the order dated 27th February, 2013 whereby the present appellants' (original defendants) right to file written statement was closed. It was held that the appellants could not explain the delay of 57 days beyond the extended period provided by the Code of Civil Procedure. Learned counsel for the defendants stated that

defendant Nos.1,2,4 and 8 were served by 28th September, 2012 by ordinary process. It is contended by the learned counsel for the appellants that the impugned order resulted in miscarriage of justice and that it did not take into consideration that all the defendants including the sisters had not been served. Counsel for the plaintiff, on the other hand, submitted that since the Single Judge exercised her discretion and refused to condone the delay, this Court not interfere with the order.

This Court has considered the submissions. The suit is for partition. Considering the fact that in such litigation, all parties have equal rights and in fact are considered as standing in the position of plaintiffs, this Court is of the opinion that the interests of justice would lie in granting the relief to the appellants even though there is some delay in their approaching the Court to defend it. In the circumstances, the appellants shall file their written statements subject to payment of Rs.25,000/- as costs to the plaintiff/respondent within two weeks from today. The written statement(s) shall be filed within a week thereafter.

Learned counsel for the respondent/plaintiff suggested that the plaintiff is willing to explore the possibility of a settlement in mediation. Counsel for the appellant is also agreeable to this course. The parties are

4

accordingly directed to appear before Delhi High Court Mediation & Conciliation Centre on 29th July, 2013 and the suit shall be listed before the learned Single Judge on 26th August, 2013 for further proceedings.

The appeal is allowed in the above terms.


S. RAVINDRA BHAT, J


NAJMI WAZIRI, J

JULY 18, 2013/'sn'