

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

% *Order delivered on: 22nd July, 2013*

+ **CM(M) No.537/2013 & C.M. Nos.7997-99/2013 & C.M. No.11075/2013**

JOGINDER VERMA Petitioner
Through Mr.Harjinder Singh, Adv.

versus

TAJINDER SINGH Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

C.M. No.11075/2013 (for restoration)

The present petition under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 3rd August, 2011 passed by the trial court dismissing the application of the petitioner/defendant under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay in filing Written Statement. The petition was dismissed vide order dated 14th May, 2013 in default as no one appeared when the matter was called. The petitioner thereafter filed an application being C.M. No.11075/2013 for restoration. The same is allowed. The petition is restored to its original number.

CM(M) No.537/2013

1. The suit was filed for recovery of rent, damages/use and occupation charges amounting to ₹33,150/- and for possession of the tenanted premises filed by the respondent/plaintiff against the petitioner/defendant wherein the petitioner was served with summons on 22nd February, 2006. However, after

seeking the time twice for filing the written statement, on 18th March, 2003 and 23rd March, 2006, the same was not filed till 12th April, 2006 on which date again an adjournment was sought on the ground that stenographer of the counsel for the petitioner/defendant was not well and even the cost imposed was not paid. Consequently, the defence of the petitioner was struck off.

2. By way of an application under Section 5 of the Limitation Act read with Section 151 CPC filed on 15th January, 2007, the petitioner sought to recall the order dated 12th April, 2006. It was contended by the petitioner that on 12th April, 2006, though the counsel contacted him over phone and informed him about the said order, on 14th April, 2006, his son contacted and intimated the counsel of the petitioner that the petitioner was suffering from bilateral sciatica legs and was advised complete bed rest. It is contended that even though the counsel apprised him again about the necessity of filing the written statement along with the application for condonation of delay at the earliest, the petitioner showed his inability for the same on account of his illness and also on advise of the doctor for complete bed rest for a period of 8 months. It was only on 22nd December, 2006 that the petitioner was able to contact his counsel.

3. In the reply to his application, the respondent contended that the petitioner had filed false medical certificate on record since while the medical certificate showed that the petitioner was ill w.e.f. 1st October, 2004 to 25th May, 2005 and on 14th February, 2005, the petitioner executed the documents of the suit property in favour of the respondent in the office of Sub-Registrar Delhi. He also contended that the suit was filed in December 2005 and even though the petitioner and his counsel had appeared on several

dates thereafter, the alleged fact of illness was not communicated to the Court.

4. On hearing the parties on the said application, it was observed by the trial court that petitioner was in effect seeking review of the order dated 12th April, 2006 whereby the opportunity to file the written statement was closed. The grounds for review were limited and the order dated 12th April, 2006 did not suffer from any illegality, perversity and there was no error apparent on the face of the record and there was no discovery of any new and important matter or evidence which was not in the knowledge of the petitioner/defendant when the said order was passed. The court had closed the opportunity for filing the written statement when despite several opportunities being given, the same was not filed. Even otherwise, there was no merit in the application as the same was filed after a delay of more than 90 days and no cogent reason was given for the delay. Either on 12th April, 2006 or any time before, it was not stated on behalf of the petitioner that he was on bed rest and unable to sign the written statement. Rather on 12th April, 2006, it was stated that the stenographer of the counsel was ill and therefore the written statement could not be prepared. The said application was dismissed by order dated 3rd August, 2011.

5. Aggrieved by the order dated 3rd August, 2011, the present petition has been filed on the ground that the impugned order is improper and illegal and the application of the petitioner was dismissed arbitrarily.

6. There is a total delay of 259 days in filing the written statement as the right to file the written statement was closed on 12th April, 2006. The said order is being again challenged by the petitioner after expiry of about seven years after dismissal of the review petition. The original suit is for recovery

of rent to the tune of ₹33,150/-. Thus, this court in view of facts and circumstances of the present case is not inclined to interfere with the impugned order. The petition is accordingly dismissed. All pending applications stand disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 22, 2013