

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

+ **CM(M) 297/2015 and CM No. 6199/2015 (Stay)**

% Reserved on: 27th May, 2015
Decided on: 29th June, 2015

SAROJ BHUTANI

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Jatan Singh, Mr. Akhilesh and
Ms. Aastha Dhawan, Advocates.

versus

HARJEET SINGH & ORS

..... Respondents

Through: Mr. Yogender Vashisth, Advocate for
Respondent No.1.
Mr. Sanjeev Sabharwal, Advocate for
DDA.
Mr. Surender Sachdeva, Manager of
Respondent No. 2, in person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 23rd February, 2015 whereby the application of the petitioner Saroj Bhutani who was the defendant No.1 in CS No.42/14 titled as Harjeet Singh Vs. Saroj Bhutani & Ors. under Order VIII Rule 1 CPC was dismissed, Saroj Bhutani prefers the present petition.

2. Vide the impugned order, the learned Trial Court while dismissing the application held that Saroj Bhutani has not been able to explain the reason for non-filing the written statement within time though she was served much prior to 31st August, 2013 and there was a delay of more than 100 days in filing the written statement.

3. Harjeet Singh, the respondent No.1 herein filed a suit against Saroj Bhutani, Dera Ghazi Khan District Refugee Cooperative House Building Society Ltd. and DDA seeking a decree of specific performance against Saroj Bhutani and to get a perpetual sub-lease deed of plot No. 319 admeasuring 166.67 sq.yds. situated in the layout plan of Dera Ghazi Khan District Refugee Cooperative Housing Building Society, known as Tarun Enclave, Pitampura (in short the suit property) executed and registered in his favour from the society and DDA; and upon execution and registration get the suit property converted from leasehold to freehold and on receipt of balance sale consideration of ₹15 lakhs hand-over vacant peaceful possession of suit property and execute the registered sale deed in favour of Harjeet Singh. Mandatory and permanent injunction was also prayed for. In the plaint two address of Mrs. Saroj Bhutani were mentioned. The first address was H.No.89, Model House, Lucknow, U.P. and the alternative address was F-46, Kirti Nagar, New Delhi. Even in the agreement to sell and purchase entered into between Harjeet Singh and Saroj Bhutani the address of H.No.89, Model House, Lucknow was mentioned whereas in the general power of attorney executed by Saroj Bhutani in favour of Harjeet Singh the first address of Smt. Saroj Bhutani is of H.No.89, Model House, Lucknow, U.P. and the alternative address is F-46, Kirti Nagar, New Delhi.

4. In the application under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement Smt. Saroj Bhutani stated that in the last week of August, 2013 she came to know from her brother about the notice of a suit pending before the Court and the next date being 31st August, 2013. Saroj Bhutani being an old lady living alone sometimes at Lucknow with her brother and sometimes at Delhi engaged a counsel to represent her

on her behalf before the Hon'ble Court who appeared on 31st August, 2013, however the learned Presiding Officer was on leave on that date. Learned counsel for Saroj Bhutani asked for complete set of paper book from the counsel for the plaintiff and the proceedings were renotified for 8th January, 2014. The service of Saroj Bhutani was effected on 31st August, 2013 when she had gone to Lucknow for some personal work and suffered illness due to some medical problems. There was difficulty in giving instructions to the learned counsel telephonically. Thus, though the written statement had been drafted by the counsel on or before 25th September, 2013, however since she was in Lucknow the same could not be signed and filed. After recovering from her health Saroj Bhutani came back to Delhi on 4th January, 2014 and the written statement was filed on 8th January, 2014. Thus, delay in filing the written statement be condoned. Reliance is placed on Kailash Vs. Nankhhu & Ors. (2005) 4 SCC 480.

5. A perusal of the service of summon would reveal that the service of summons through ordinary process sent at the address of F-46 Kirti Nagar it was recorded that the process server met a lady at the spot who told that no Saroj Bhutani resides at the premises and one Ahuja family stays there. The person available refused to give any other information and on the name plate Ahuja's was written.

6. Admittedly, no service has been effected on Smt. Saroj Bhutani at Lucknow which is her first address in the plaint and when the service was affected at F-46, Kirti Nagar, New Delhi, she was not present.

7. The issue, thus, arises is whether Smt. Saroj Bhutani has made out a sufficient cause to condone the delay in filing the written statement or not.

8. Learned counsel for the petitioner, to support his contention, relies upon the decision in *Kailash Vs. Nankhu & Ors.* (2005) 4 SCC 480 and *R.N. Jadi and Brothers and others v. Subhashchandra* (2007) 6 SCC 420. Both these decisions have been rendered by three Judges' Bench of the Supreme Court. In *Kailash (supra)*, the Supreme Court held that Order VIII Rule 1 of CPC and the proviso thereto are directory in character and not mandatory, though, they cast an obligation on the defendant to file the written statement within the time prescribed therein, the provisions do not deal with nor specifically take away the power of the court to take the written statement on record, filed beyond the time as provided therein. It was however emphasized that Order VIII Rule 1 CPC and proviso thereto as amended having been held to be directory may not be understood as nullifying the entire force and impact, in its amended form and clarified that ordinarily, the time schedule contained in the provisions is to be followed as a rule and departure therefrom would be by way of exception only. The Supreme Court laid down the guidelines for exercise of discretion by court in this regard and held as under-

“44. 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. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

9. Even in *R.N. Jadi (supra)*, the three Judges' Bench of Supreme Court held that the extension beyond 90 days is directory and not mandatory and that procedural laws are not an obstruction but an aid to justice. It was held that the language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. Though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

10. In the present case, admittedly no summons have been served on Saroj Bhutani at Lucknow and summons at Delhi i.e. at Kirti Nagar, New Delhi were served on a family member. Though, learned counsel for the respondent disputes the age of the petitioner on the count that in various affidavits, different ages are mentioned, however, he does not dispute that age of Smt. Saroj Bhutani is beyond 65 years. In the application under Order

VIII Rule 1 CPC, Smt. Saroj Bhutani claimed that for some personal reasons, she went to Lucknow and suffered illness due to medical problems as she is an old lady suffering from diabetes, blood pressure and heart problems. Though, the written statement was drafted by the counsel on or about 25th September, 2013 despite difficulty in taking the instructions telephonically, however, the same could not be signed as she was in Lucknow. After recovering from her health issues, she came to Delhi on 4th January, 2014 and written statement was filed on 8th January, 2014. The explanation rendered is neither malafide nor improbable and is a plausible explanation. Hence, the delay in filing the written statement is condoned. The written statement be taken on record and the matter be proceeded with in accordance with law.

11. The petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JUNE 29, 2015

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