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

+ CM(M) 830/2016 and CM No. 31041/2016 (stay)

DELHI CANTONMENT BOARD & ORS Petitioners
Through Mr.Ancit Sharma, Advocate.

versus

MANJU TIWARI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
26.08.2016

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1. By the present petition, the petitioners seek to impugn the order dated 24.11.2015 by which the application for review was dismissed and the order dated 07.08.2015 by which the application under Order 8 Rule 1 CPC was dismissed.
2. The respondent has filed the suit for mandatory injunction for transfer of leasehold rights in her name and for entering her name in the General Land Register and to renew the lease in favour of the respondent.
3. The petitioner was served on 06.04.2015. The written statement was filed on 14.07.2015. Hence, there was a delay beyond the period of 90 days in filing of the written statement.
4. The petitioner moved the application under Order 8 Rule 1 CPC. The application states that after service on 06.04.2015 on petitioner No.1, a letter dated 23.04.2015 was received from defendant No.3/respondent No.3

authorising petitioner No.1 to contest the aforesaid suit on behalf of respondent No.3. Parawise comments were given to the counsel on 08.05.2015 and on 12.05.2015, an adjournment was sought from the court for filing the written statement. Subsequently, it is also urged that there was a strike call given by the concerned Bar Association from 22.04.2015 to 13.05.2015. It is also stated that the Civil Courts were closed from 08.06.2015 till 28.06.2015 and the counsel for the petitioners were out of station during the said period. On these grounds, condonation of delay was sought in filing of the written statement.

5. The trial court vide impugned order noted about the comments having been received on 08.05.2015, the strike in the court and the holidays in the court and noted that despite having received these comments on 08.05.2015, the written statement has been filed on 14.07.2015. Mere fact of a strike or holiday of courts' due to ensuing vacation was held to be no ground for grant of condonation of delay in filing of the written statement which was beyond the period of 90 days.

6. Learned counsel for the petitioners submits that the delay took place as the records are extremely old. Even after finalisation of the written statement, various steps were taken before the same could be finalised. He also submits that no adjournment was taken for filing of the written statement inasmuch as on 12.05.2015 the matter was fixed for 14.07.2015 when the written statement was filed. Hence, he submits that no prejudice was caused to the respondent.

7. Despite service of an advance copy on the learned counsel for the respondent, none is present for the respondent.

8. Reference in this regard may be had to the judgments of the Supreme

Court in the case of *Mr. Shaikh Salim Haji Abdul Khayumsabv. Mr. Kumar and Ors.*, AIR 2006 SC 396 and *Kailash v. Nanhku and Ors.*, AIR 2005 SC 2441. The consistent view is that while dealing with the provisions of CPC, that no party should ordinarily be denied an opportunity of participating in the process of justice dispensation.

9. In my opinion, the petitioners have shown sufficient cause for the delay in filing of the written statement. The Cantonment records are old records which pertain to a period prior to 1947 when the lands are said to have been given. After comments were ready, no doubt there was some delay in filing the written statement which is explained by the court vacation and non-availability of the learned counsel for the petitioner. But no adjournment for the purpose of filing written statement was taken. Accordingly, the written statement filed by the petitioners is directed to be taken on record subject to payment of costs of Rs.10,000/-. The impugned order dated 02.08.2015 is accordingly set aside.

10. The petition stands disposed of.

JAYANT NATH, J

AUGUST 26, 2016
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