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

+ **CM(M) 1303/2016 & CM APPL. 46776-777/2016**

RAMESH GRVOER & ANR Petitioner

Through Mr.Chetan Roy, Advocate

versus

MAYA PARMAR Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **19.12.2016**

CM No. 46777/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1303/2016 & CM APPL. 46776/2016(stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 10.10.2016 by which an application under Order 8 Rule 1 read with Order 47 CPC filed by the petitioners was dismissed.
2. Petitioner No.1 was served on 01.10.2015. Petitioner No.2 was served on 30.09.2015. The said petitioners entered appearance on 05.10.2015 and sought time to file written statement. On 23.11.2015 when the petitioners appeared, the trial court noted that the period of 30 days as prescribed by CPC has expired and hence opportunity to file written statement was closed.
3. Thereafter, the petitioners have moved the said application under Order 8 Rule 1 CPC read with Order 47 CPC for review of order dated 23.11.2015 and to take on record the written statement already filed.
4. The impugned order noted that in the application under Order 8 Rule 1 CPC the stand of the petitioners is that due to financial constraints, they

could approach the counsel only after 17.11.2015. The trial court noted that petitioner No.1 is the owner of the suit premises measuring 96.5 sq.yds. in Tri Nagar, Delhi comprising of three floors worth more than Rs.55 lacs. Hence, the trial court held that it cannot be believed that the petitioner could not approach the counsel due to financial constraints. The application accordingly dismissed.

5. Order 8 Rule 1 CPC provides that the defendant is to file the written statement within 30 days from service of summon. Where, the defendant fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

6. The petitioners have not filed the written statement beyond expiry of period of 90 days. There is a delay of 23 days. The reasons given are their financial difficulty. Merely, because the petitioner owns an immovable property, cannot mean that they would *ipso facto* have liquidity as it is sought to be assumed by the impugned order. No such conclusion can be possibly drawn.

7. Advance copy of the petition has been served on the learned counsel appearing for the respondents. However, none is present on his behalf.

8. Accordingly, the present petition is allowed and the written statement already filed before the trial court is taken on record. All the pending applications are also allowed.

JAYANT NATH, J.

DECEMBER 19, 2016/v