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

+ CM(M) 608/2017

SURJEET KUMAR

..... Petitioner

Through: Mr.Baljeet Singh, Advocate.

versus

MANGAT RAM

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **26.05.2017**

CM No.20488/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM No.20489/2017

1. For the reasons stated in the application, delay of 32 days in re-filing the petition is condoned.
2. The application is disposed of.

CM(M) 608/2017

1. The petitioner is aggrieved by the order dated 6th January, 2017 whereby he has been granted conditional leave to defend to the extent it imposes the condition of furnishing FDR of ₹2,00,000 which shall be retained on record till the final order.
2. Learned counsel for the petitioner submits that the petitioner is not in a position to arrange the amount of ₹2,00,000/- and the same may be reduced or unconditional leave to defend may be granted.

3. While granting conditional leave to defend, learned Trial Court also directed the respondent to file the written statement by the next date of hearing. As per the petitioner the next date of hearing was 6th February, 2017.

4. It is not the case of the petitioner that he filed any application before the learned Trial Court either for seeking extension of time to furnish FDR and for extension of time to file the written statement. If the prayer of the petitioner made before this Court is allowed, it will have the effect of extending the time to file the written statement which has already expired on 6th February, 2017.

5. It is necessary to mention here that while making the submission for reduction of the amount of FDR learned counsel for the petitioner was also requesting for one month's time to furnish the FDR for the amount reduced. Thus in the garb of setting aside the order dated 6th January, 2017 to the extent conditional leave has been granted, in fact the petitioner is intending to get an opportunity to file the written statement as well and that too after expiry of four months and 20 days from the date when he was directed to file the written statement.

6. In the decision of the Hon'ble Supreme Court reported as ***R.N.Jadi & Brothers and Ors. vs. Subhashchandra*** AIR (200) SC 2571 it was held as under:

“A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a

clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred Mcalpine & Sons (1968) 1 All E.R. 543 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

7. In view of the legal position referred to above, I am of the opinion that the impugned order granting conditional leave to defend needs no interference by this Court in exercise of its power under Article 227 of the Constitution.

8. Dismissed.

CM No.20487/2017 (stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 26, 2017

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