

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

**Reserved on: 11th August, 2017
Pronounced on: 24th August, 2017**

+

CS(OS) 3198/2014

AMARJEET KAUR ETC

..... Plaintiffs

Through : Mr.S.S.Gautam, Advocate.

versus

RAGHUBIR SINGH

..... Defendant

Through : Mr.Pankaj Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

OA No. 87/2017 and IA No. 6503/2017

1. Appellant/defendant moves the IA No.6503/2017 under Section 5 of the Limitation Act read with Order 8 Rule 1 and Section 151 of the Civil Procedure Code for delay condonation of 648 days in preferring the OA No.87/2017 before this Court impugning the order dated 14.07.2015 passed against him by learned Joint Registrar in above noted case.

2. The impugned order dated 14.07.2015 read as under:-

*“Defendant has been served with the summons of the suit through his wife by ordinary process on 11.03.2015.
I deem it to be an appropriate service on the defendant.*

Defendant has not filed written statement till date. The period of 90 days for filing written statement has already expired. Hence, the right of the defendant to file the written statement stands closed."

3. Before coming to the facts, it is to note that vide order dated 12.05.2016 this suit was transferred to learned District Judge, Shahdara, Karkardooma Courts, Delhi on account of its pecuniary jurisdiction. The suit is pending trial before Shri Ravinder Singh, learned Additional District Judge, Shahdara, Karkardooma Courts and listed for 28.08.2017. Upon moving chamber appeal and application, the record has been called by this Court.

4. This application and appeal has been filed by the defendant on 26.04.2017 and he seeks condonation of 648 days. The reasons attributed in the application is that earlier a similar suit bearing No.94/2014 was filed by the plaintiffs against the defendant herein which was withdrawn by the plaintiffs on 27.08.2014 due to its pecuniary jurisdiction. Thereafter, the plaintiff filed the present suit for possession, mesne profits, damages and permanent injunction, alleging to be an absolute owner of the property bearing No.11227, Khasra No.375, Janata Colony, Subhash Park, Naveen Shahdara, Delhi- 110032 constructed with three rooms, one toilet, one bathroom, one kitchen, one store room and open space, admeasuring 200 square yards alleging that he had purchased the subject property on 11.02.1990 and that it was given to the real brother of plaintiff No.1 for his residential use, purely on licence

basis. In June 2012 when the plaintiff requested his real brother viz. the father of defendant to vacate the property, he failed to vacate it. The brother of plaintiff No.1 expired on 12.11.2012. Thereafter the plaintiff requested the defendant to vacate the suit premises but he failed to vacate it and even did not pay damages @ ₹10,000/- per month, being an unauthorized occupant. The plaintiff thus filed this suit for possession and claiming damages @ ₹10,000/- per month and for permanent injunction.

5. The notices of this suit were issued on 17.10.2014 and again on 03.01.2015 and the matter was listed before the Joint Registrar on 14.07.2015 when the service report was filed and it was observed that summons of the suit have been duly served upon the defendant through his wife. However, defendant did not appear and later this suit was transferred to learned District Judge, Karkardooma and listed before Shri Ravinder Singh, learned Additional District Judge on 28.07.2016. The notice of the suit was again issued to the defendant and he received the notice and approached his counsel namely Shri S.K. Pandey, chamber No.D-410, Karkardooma Courts, Delhi who got the *Vakalatnama* signed and promised that he shall appear before the Court and inform about the court proceedings to defendant and there was no need for the defendant to appear in the Court.

6. It is further alleged that in first week of November, 2016 the appellant met with his advocate who informed that the matter was listed for 07.12.2016 and then whenever the appellant contacted

his counsel he would tell that he shall inform about the proceedings, but did not inform despite various visits to him.

7. Finally, on 27.02.2017, the appellant engaged another counsel who inspected the case file and came to know that the matter is listed for 02.03.2017 and right of the defendant to file the written statement stood closed vide the impugned order. As the appellant was not having any document pertaining to this suit – he applied for the certified copies and moved an application before learned Trial Court under Section 151 of the CPC for setting aside the order dated 14.07.2015, but it was dismissed with liberty to approach this Court vide order dated 02.03.2017. The appellant then applied for the certified copy of order dated 02.03.2017 and received the same only on 12.04.2017 and hence filed the appeal and application in this Court on 26.04.2017.

8. The facts of the case show a very casual approach of the defendant in pursuing the litigation. No one can believe that a litigant after giving his brief to the counsel would sleep over the matter for an year and would just ask him about the proceedings without insisting for his appearance in the Court to actually know what is going on in his case.

9. The present case is an exact example of this very situation where the defendant allegedly appointed an advocate to appear on 28.07.2016 before the Court and did not bother to find out the proceedings of his case till after 07.12.2016 and when on

27.02.2017 he engaged another counsel and came to know his right to file written statement was closed on 14.07.2015. Though, it is alleged that he moved an application under Section 151 of the CPC before the learned Trial Court, but was advised to approach this Court by way of instant appeal. Then he applied for the certified copies of the record and proceedings on 27.02.2017 and despite getting those on 12.04.2017 he took further 14 days to move this application/appeal.

10. Such a casual approach in a case for possession, mesne profits when the defendant is asked to pay damages @ ₹10,000/- per month, cannot be acceptable when it is alleged that he is a licensee and has no right to stay in the premises.

11. Proviso to Rule 1 of Order 8 of the CPC though gives a discretion to the Court to extend the period for filing the written statement beyond 30 days, but that too for the reasons to be recorded in writing, but nothing later than 90 days from the date of the service of the summons upon defendant. Here such period has lapsed long before and the defendant is now coming forward to get condonation of delay of about two years, when admittedly the notice was served twice and he failed to file written statement in any case, within 90 days.

12. No cogent ground is shown to condone the delay of 648 days and rather the facts alleged show the casual approach of the appellant herein. It is the settled law that each day delay needs to

be explained and even lastly when he received the certified copy of order on 12.04.2017 yet he filed application and appeal after 14 days i.e. on 26.04.2017. To obtain discretion in one's favour, the party must show that he was pursuing this lis in a very diligent manner – which actually is missing in the present case, hence such a delay cannot be condoned. Accordingly, the application and appeal both are dismissed as same lack merit.

13. No order as to cost.

CS(OS) 3198/2014

14. Parties to appear before learned District Judge, Shahdara District, Karkardooma Courts, Delhi on 06.09.2017 at 02.00PM for further directions. Registry to take necessary steps for remitting the original record forthwith.

15. Needless to state that a complete digitized copy of this case be prepared and retained by the Registry so that it can be used in case of any necessity.

AUGUST 24, 2017

M

YOGESH KHANNA, J