

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

% Judgment delivered on: 14.12.2016

+ **CS(OS) 2202/2011 and CRL.M.A. 4043/2010, I.A. 5155/2012, I.A. 16143/2014, I.A. 22465/2014, I.A. 8405/2016, I.A. 14602/2016, I.A. 16794/2009, I.A. 3976/2015, I.A. 11460/2013, I.A. 2589/2011, I.A. 3299/2012, I.A. 13260/2012, I.A. 12174/2013, I.A. 19252/2015, I.A. 477/2010, I.A. 4109/2013, CRL.M.A. 895/2011 and I.A. 13277/2012, I.A. 12227/2016**

AVNIJA AHLUWALIA(MINOR)

..... Plaintiff

Versus

BIKRAMJIT AHLUWALIA & ORS.

.... Defendants

Advocates who appeared in this case:

For the Plaintiff : Mr Manav Gupta, Ms Esha Dutta, Mr Sahil Garg and Ms Ridhi Munjal.

For the Defendants : Mr Sanjay Sharma.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

IA No. 14602/2016

1. For the reasons stated in the application the delay of two days in filing the appeal (OA No. 222/2016) is condoned and the same is allowed.

2. The application stands disposed of.

OA No. 222/2016

3. The plaintiff has filed the present appeal under Rule 4 of Chapter II of

the Delhi High Court Rules, 1967 impugning an order dated 04.11.2016 passed by the learned Joint Registrar (hereafter 'the impugned order') whereby the applications filed by the defendants for seeking permission to file the written statements were allowed.

4. The plaint was filed on 19.12.2009 and was initially numbered as IPA No. 29/2009; it was subsequently converted to a Civil Suit on 06.09.2011. Indisputably, the defendants were required to file their written statements within the prescribed time but the defendants failed and neglected to do so. However, the defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (IA No. 13260/2012) on 01.06.2012. The plaintiff also filed an application for amendment of the plaint (IA No. 13186/2011) on 12.08.2011.

5. The plaintiff's application under Order VI Rule 17 of the CPC (IA 13186/2011) was allowed on 15.05.2013. However, the defendants' application continued to be pending and was finally dismissed on 21.04.2016 with costs. The defendants preferred an appeal against the said order dated 21.04.2016 (being FAO(OS) 173/2016). However, the same was entertained only on the limited question of imposition of actual cost.

6. After the application under Order VII Rule 11 of the CPC (IA 13260/2012) had been dismissed, the defendants filed an application (IA 8405/2016) on 11.07.2016, *inter alia*, praying that the defendants be permitted to file their written statements. This was followed by another application (IA No.12227/2016) filed on 09.08.2016 for similar reliefs.

7. The aforesaid applications have been allowed by the learned Joint Registrar and this has led the plaintiff to file the present appeal.

8. Mr Manav Gupta, learned counsel appearing for the appellant (plaintiff) assailed the impugned order passed by the learned Joint Registrar principally on two grounds. First, he submitted that the learned Joint Registrar had grossly erred in allowing the applications, since a similar relief had been rejected by this Court in its order dated 21.04.2016 as well as by the Division Bench by its order dated 31.05.2016. Second, he submitted that the only ground on which the learned Joint Registrar had allowed the applications was that the defendants' applications under Order VII Rule 11 of the CPC were pending. He submitted that pendency of an application under Order VII Rule 11 of the CPC cannot be the ground for not filing the written statement. Third, he submitted that the impugned order was patently erroneous and in complete disregard of the provisions of Order VIII Rule 1 of the CPC which required defendants to file the written statement within 30 days from the date of service of summons.

9. Mr Sanjay Sharma, learned counsel appearing for the respondents (defendants) countered the submissions made on behalf of the appellant. He submitted that the defendants' right to file their written statement could not be closed as this Court had not fixed any time to file the written statement. He earnestly contended that by virtue of Order VIII Rule 10 of the CPC, a Court could proceed to pronounce judgment against the defendant for the failure of the defendant to file a written statement, if the defendant had failed to file the same within the time fixed by the Court. He submitted that in the present case, the Court had not passed an order fixing any time to file

the written statement and, therefore, the defendants' right to file written statement could not be closed. He also referred to the provisions of Order VIII Rule 9 of the CPC to contend that the Court was required to fix a time to file the written statement to the amended plaint.

10. He also relied upon the decision of the Supreme Court in **R.K. Roja v. U.S. Rayudu and Ors.**: AIR 2016 SC 3282 and submitted that there was no requirement to file a written statement until the defendant's application under Order VII Rule 11 of the CPC was rejected.

11. I have heard the learned counsel for the parties.

12. I am unable to accept Mr Sharma's contention that this Court had, by the order dated 21.04.2016, closed the right of the defendants to file a written statement. Undoubtedly, the Court had expressed the view that filing of an application under Order VII Rule 11 of the CPC did not extend the time for filing the written statement. However, there was no specific order rejecting the defendants' request to file a written statement. It is noteworthy that the applications seeking to place the written statement on record were filed subsequent to the order dated 21.04.2016.

13. The relevant extract of the said order is quoted below:-

"7. I may note that in this suit filed in the year 2011, and in which amended plaint was filed in the year 2011 itself, there is till date no written statement filed by the defendants. Defendants are placing reliance upon an Order of a learned Single Judge of this Court dated 15.05.2013 which puts the plaintiff to notice as to how the plaint discloses a cause of action, and, therefore, it is argued that the defendants have

not filed written statement. It is however noted that the Order dated 15.05.2013 does not categorically observed that the defendants should not file their written statement. Therefore, ordinarily the defendants ought to have filed written statement inasmuch as now the provisions of the Code of Civil Procedure specify a time period to file the written statement. Filing of an application under Order VII Rule 11 CPC does not mean that there is an automatic stay for filing of the written statement."

14. Similarly, I am also unable to accept that the order dated 31.05.2016 passed by the Division Bench of this Court in FAO(OS) 173/2016 also precluded the defendants from filing the written statement. Admittedly, the defendants (appellants therein) had prayed for an alternate relief for being permitted to file a written statement. However, that plea was not entertained and notice was issued limited to the question of imposition of costs. However, the said order cannot be read to mean that the defendants were prevented from approaching the Court for filing the written statement.

15. However, Mr Sharma's contention that filing of an application under Order VII Rule 11 of the CPC does not automatically absolve the defendants of their obligation to file a written statement within the time as specified, is merited. The said view has been reiterated in several decisions. (See: **Nunhems India Pvt. Ltd v. Prabhakar Hybrid Seeds**: 2013 (197) DLT 393, **Transport Corporation of India L v Reserve Bank of India and Anr.**: 2015 (152) DRJ 285 and **Vinay Singh v Rinku Gupta**: 2010 SCC OnLine Del 3238).

16. The decision of the Supreme Court in ***R.K. Roja*** (*supra*) was rendered in the context where the High Court had passed an order directing that the

application for rejection of the election petition on the ground that it did not disclose any cause of action would be decided at the time of final hearing. In that context, the Court had held that it is necessary that an application under Order VII Rule 11 of the CPC be disposed of before proceeding with the trial of the case. The said decision cannot be understood to mean that the time period in filing the written statement would stand automatically extended till the disposal of an application filed under Order VII Rule 11 of the CPC.

17. In my view, it is also not open for the defendants to urge this contention, since the same had been specifically rejected by this Court in its order dated 21.04.2016. Although, the defendants had appealed against the said order, however, the same has not been set aside.

18. Mr Sharma's contention that the defendants' right to file the written statement could not be closed as no time had been fixed by the Court is also bereft of any merit.

19. Rules 1, 9 and 10 of Order VIII of the CPC is set out below:-

"VIII (1). Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that 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.

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9. Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit: but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

20. A plain reading of the above quoted Rules indicate that the Court shall pronounce a judgment where a party has failed to present the written statement "*within the time permitted or fixed by the Court*". The expression "time permitted" must be read to be the time as permitted under the law, that is, under Order VIII Rule 1 or Rule 9 of the CPC. It is not necessary for the Court to specifically fix the time for filing the written statement before passing judgment in terms of Order VIII Rule 10. The reference to Order VIII Rule 9 of the CPC is also misplaced as the same only pertains to pleadings subsequent to the written statement. In the present case, admittedly, no written statement was filed and, therefore, Order VIII Rule 9 of the CPC would have no application.

21. Having stated above, it is also necessary to observe that the record of proceedings indicate that the matter was listed on several occasions for

hearing the application under Order VII Rule 11 of the CPC (IA 13260/2012). The record further indicates that hearings have been adjourned on several occasions at the instance of the plaintiff.

22. Further, the present suit has been filed, *inter alia*, seeking a decree of partition, rendition of accounts and it would be expedient to consider the defence raised by the defendants. Although, there has been inordinate delay in filing of the written statement, in my view, it would not be in the interest of justice, to shut out the defendants from filing the written statement. However, I am unable to accept that the applications filed by the defendants ought to have been allowed without imposition of costs. Accordingly, the respondents are directed to pay costs which are quantified at ₹25,000/- and the impugned order is modified to that extent.

23. The appeal is disposed of with the aforesaid observations.

24. The cost be paid to the plaintiff within a period of two weeks from today.

DECEMBER 14, 2016
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VIBHU BAKHRU, J