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

+ CM(M) 680/2017

SURAIYA BEGUM & ORS Petitioners
Through: Mr. Mohd. Ahmed, Adv.

Versus

MOHD SUHALIN Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.08.2017**

CM No.23441/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 680/2017 & CM No.23442/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 6th March, 2017 in Suit No.98689/2016 of the Court of Civil Judge-1, Central District, Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners/defendants under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) for condonation of delay in filing the written statement.
4. Though this petition has also been brought after five months from the order but the counsel for the petitioners/defendants, on enquiry, states that the suit has not been disposed of as yet and is listed for the respondent/plaintiff's evidence.

5. The counsel for the petitioners/defendants has been heard.
6. The respondent/plaintiff instituted the suit, from which this petition arises, for ejectment of the petitioners/defendants from an immovable property pleading that the petitioners/defendants were the tenants/sub-tenants therein at a rent of Rs.4,000/- per month and the tenancy of the petitioners/defendants/tenants had been terminated. The petitioners/defendants were served with the summons of the suit on 19th July, 2013 and appeared before the learned Civil Judge on 31st August, 2013 when the arguments on the application under Order XXXIX Rules 1&2 CPC were heard and with a direction for the written statement to be filed within the prescribed period and for replication to be filed thereafter, the suit was listed next on 30th October, 2013 for framing of issues. The petitioners/defendants did not file written statement and presented the same only when the suit was listed next on 30th October, 2013, when finding that the written statement had been filed beyond time and no application for condonation of delay in filing the written statement also had been filed and further observing that the written statement had been filed only by the petitioner/defendant No.2, though on behalf of all other petitioners/defendants but without any authorisation in favour of petitioner / defendant No.2, the written statement was not taken on record and the suit posted for respondent/plaintiff's evidence on 4th February, 2014. The petitioners/defendants still did not file any application for condonation of delay in filing the written statement and filed such an application only before the date of 6th March, 2017, till when the suit inexplicably remained

pending, notwithstanding the written statement of the petitioners/defendants having not been taken on record.

7. The learned Civil Judge has vide the impugned order dismissed the application reasoning that no reason whatsoever for not filing the written statement had been given in the application and not only was the written statement presented on 30th October, 2013 beyond 90 days but the application also had been filed after considerable delay.

8. The counsel for the petitioners/defendants in the petition has pleaded that on 31st August, 2013, the written statement was permitted to be filed on 30th October, 2013 and has before this Court also argued the same. It is unfortunate that the advocate, inspite of filing a copy of the order dated 31st August, 2013 along with the paper book, has made wrong pleadings and wrong submissions before the Court with respect thereto. The only inference can be that the attempt is to hoodwink the Court into acting on the pleadings and arguments and entertaining the petition and to take advantage therefrom.

9. Such conduct of the advocate for the petitioners/defendants is but to be condemned and the petition is liable to be dismissed on this ground alone.

10. I have nevertheless perused the application and find that the only reason given therein is that the counsel for the petitioners/defendants on 31st August, 2013 ‘got an impression’ that the matter was adjourned to 30th October, 2013 for filing of the written statement and accordingly the written statement was filed on 30th October, 2013 and after that date some other advocate was appearing as proxy counsel for the counsel for the petitioners/defendants and who also did not realise that the written statement

had not been taken on record.

11. Advocates are engaged to guide the clients and to ensure speedy disposal of the *lis* before the Courts and if the advocates do not understand the law or act on incorrect impressions and for three years do not realise the purport of the proceeding in the Court, the clients engaging such advocates have to suffer and the legal system cannot be brought to naught for such conduct.

12. I am also of the view that unless the Courts start enforcing the discipline, the amendment to CPC brought 15 years back would continue to hold no meaning and it is essential for the message to go that the Courts in such cases, as the present one, refuse to show any indulgence.

13. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 24, 2017

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