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

+ **CM(M) 813/2017**

LEENA DEVI

..... Petitioner

Through: Mr. Karan Pal Singh, Adv.

Versus

SUSHIL AGGARWAL & ANR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.08.2017

CM No.27317/2017 (for exemption)

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

CM(M) 813/2017

3. This petition under Article 227 of the Constitution of India impugns the order [dated 9th May, 2017 in Civil Suit No.448/2016 of the Court of Additional District Judge (ADJ)-02, Central, Tis Hazari Courts, Delhi] dismissing the application of the petitioner / defendant for condonation of delay in filing the written statement.
4. The written statement was filed on the 159th day after the service of summons of the suit on the petitioner / defendant.
5. The petitioner / defendant was served with the summons of the suit on 22nd October, 2016 and on 20th January, 2017 appeared before the Court through her son Varun Singh and her husband's elder brother Kirpal Singh accompanied with the advocate who is today also appearing for the petitioner / defendant. The counsel for the petitioner / defendant on 20th

January, 2017 stated that he will be moving a proper application seeking time for filing written statement.

6. The suit was accordingly adjourned to 9th May, 2017.

7. Written statement was filed as aforesaid on 159th day, on 31st March, 2017 resulting in the impugned order dated 9th May, 2017.

8. The counsel for the petitioner/defendant has argued that the petitioner / defendant was in hospital from 7th October, 2016 to 13th October, 2016 and thereafter from 30th January, 2017 to 6th February, 2017 and owing whereto the written statement could not be filed.

9. I have enquired from the counsel for the petitioner / defendant the nature of the suit.

10. It is informed that the suit is *inter alia* for recovery of possession of immovable property where the petitioner / defendant is residing.

11. I have further enquired from the counsel for the petitioner / defendant, whether the petitioner / defendant is residing alone in the said property.

12. It is informed that the petitioner / defendant is residing with her son and three daughters.

13. Once that is so and the said persons would also in pursuance to the decree for possession if any passed be removed from the premises, it is inexplicable as to why the written statement could not be got prepared within time or as to why the elder brother of the husband of the petitioner/defendant, though stated to be not residing in the premises but who had appeared on behalf of the petitioner/defendant before the Court, could not instruct the preparation and filing of the written statement. It is also not as if the petitioner/defendant was without advocate on 20th January, 2017. The advocate, if not

engaged earlier, was definitely engaged on 20th January, 2017 and ordinarily owing to the delay already committed from 22nd October, 2016 in filing the written statement, should have taken instructions and drafted the written statement immediately.

14. The counsel for the petitioner / defendant has also argued that fresh summons were ordered to be issued to the petitioner / defendant on 20th January, 2017 and served on 25th March, 2017.

15. Once it is admitted that the petitioner / defendant was first served on 22nd October, 2016, it is the said date which is to be computed for the purpose of counting the period for filing the written statement as held by the Division Bench of this Court in ***Ashok Kumar Vs. Purshotam Lal Verma*** 2016 SCC OnLine Del 5358. Thus no advantage can be taken by the petitioner / defendant of multiple modes adopted to ensure service.

16. The counsel for the petitioner / defendant has also argued that along with the first summons, the copy of the plaint was not received and the said fact was mentioned before the Court on 20th January, 2017.

17. However upon it being pointed out to the counsel for the petitioner / defendant that it is not so recorded in the order dated 20th January, 2017, the counsel for the petitioner / defendant states that it is up to the Judge to record whatsoever she wants but according to him the request was made for copy of the plaint and which was received along with the summons on 25th March, 2017.

18. The legislature having amended the Code of Civil Procedure, 1908 (CPC) with the intent to eliminate the delays in the suit, at least at the stage of filing of the written statement, by providing for the time period for filing

thereof and the said law being 15 years old, the advocates should have now gotten used to filing of the written statement within time. However it appears that owing to the indulgence shown by the Courts, the practice of sending proxy counsels to seek adjournment without drafting even an application for extension of time for filing written statement, continues and which results in legislative intent being totally defeated. It is felt that unless the Courts start enforcing the law, the purport of the amendment to the CPC will not seep in and would remain a nullity, as is evident from the conduct of the counsel for the petitioner / defendant in the subject suit.

19. In all cases, time for filing written statement cannot be extended inspite of nothing placed before the Court to show as to why 30 days were not sufficient.

20. No ground for interference with the impugned order is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 02, 2017

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