

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

% **Date of decision: 2nd August, 2017**

+ **CM(M) 812/2017**

ANIL KUMAR GOEL

..... Petitioner

Through: Mr. Punit Jain, Adv.

Versus

ARUN KUMAR GOEL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.27299/2017 (for exemption)

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

CM(M) 812/2017 & CM No.27300/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 1st July, 2017 of the Court of District & Session Judge , Shahdara, Karkardooma Courts, Delhi as under:

“01.07.2017

Present: Plaintiff – by Sh. Devanshu Jain, Adv.
Defendant – by Sh. K.D. Singh, Adv. – seeks time.
Declined since WS not filed despite opportunities.
Put up for PE by 23.08.2017.”

4. The order aforesaid does not disclose any reason whatsoever for purportedly closing the right of the petitioner / defendant to file written statement and in fact does not even close the right to file written statement and does not strike off the defence of the petitioner / defendant and does not give any reason in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) as to why the suit was not being decreed immediately or why the need for requiring the respondent / plaintiff to lead

evidence was felt, as the order should in law. Reference in this regard may be made to *Balraj Taneja Vs. Sunil Madan* (1999) 8 SCC 396, *C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by LRs* (2012) 5 SCC 265 and *Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Company Ltd.* (2013) 4 SCC 396.

5. What transpires from reading of the paper book is that i) summons of the suit issued on 11th April, 2017 were served on the petitioner / defendant on 19th April, 2017; ii) the petitioner / defendant appeared before the Court on 18th May, 2017 through proxy advocate who filed vakalatnama and the order of 18th May, 2017 is as under:

“18.05.2017

Present: Plaintiff – by Sh. R.K. Jain, Advocate

Defendant absent. By proxy Sh. Praveen Aggarwal – files V/n on behalf of Sh. Puneet Jain. Extra Copy furnished by the Court.

Put up this matter for WS by 01.07.2017;”

iii) that the written statement was not filed and no application for extension of time for filing written statement was also filed and which resulted in the order dated 1st July, 2017 supra.

6. I may notice that the petitioner / defendant, even along with this petition, has not filed any written statement.

7. The counsel for the petitioner / defendant states that one week's time be given to file written statement, indicating that the written statement is still not ready.

8. The counsel for the petitioner / defendant has argued i) that the period of 30 days prescribed for filing the written statement is only directory; ii) that the time of 90 days for filing the written statement had not expired and, iii) that complete paper book was given to the petitioner / defendant only on 18th May, 2017. It is thus contended that one more opportunity be given.

9. After this Court has indicated that I am not inclined to grant any such indulgence, additional arguments are raised, i) that the documents are very voluminous and written statement could not be prepared; and, ii) that talks of settlement were going on.

10. All the said pleas taken now as an afterthought and without filing any application for extension of time for filing written statement, cannot be accepted at this stage.

11. This Court, in exercise of jurisdiction under Article 227 of the Constitution of India, is to inquire, whether the order impugned is perverse and in the facts aforesaid, the order cannot be said to be perverse. Moreover, 30 days time is sufficient to file written statement, howsoever voluminous the documents may be. This is quite evident from the fact that the counsel for the petitioner, being pressed to the wall, is now ready to prepare the written statement within one week only. Similarly, the plea of complete paper book having not been furnished is also not borne out from the order dated 18th May, 2017. It cannot be lost sight of that Mr. Puneet Jain, Advocate appearing today and who states that he is the advocate for the petitioner / defendant in the suit also, did not even bother to appear on either of the dates and on one of the dates sent proxy counsel Mr. Praveen Aggarwal and on the next date sent another proxy counsel Mr. K.D. Singh, only with the intent to seek adjournment.

12. The legislature, with the intent to eliminate the delays in disposal of suits, at least at the stage of filing of the written statement, having provided for the time period for filing thereof and the said law being 15 years old, the advocates should have by now got 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, continues unabated 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 Order VIII Rule 1 of the CPC will not seep in and would remain only in the books, as is evident from the conduct of the counsel for the petitioner / defendant in the subject suit.

13. In all cases, the latitude for filing written statement, even if there be nothing placed before the Court to show as to why 30 days were not sufficient, cannot be granted. The same would also be in breach of express language of Order VIII Rule 1 of the CPC. As far back as in *Prem Lata Vs. Rajender Soni* 126 (2006) DLT 168, relying on *Kailash Vs. Nanhku* (2005) 4 SCC 480 this Court held that extension of time, after 30 days should not be granted in a routine manner, merely for asking. The contention of the advocate for the petitioner that the time of 90 days is available as a matter of right is clearly erroneous. In fact, without extension beyond 30 days being sought and granted, the right to file written statement stood closed on expiry of 30 days from service of summons.

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

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 02, 2017

‘gsr’