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

+ CM(M) No.790/2017 & CM No.26419/2017 (for stay).

INDER PAL SINGH ANAND

..... Petitioner

Through: Mr. Suhail Dutt, Sr. Adv. with Mr.
Anish Kapur, Mr. Munindra Dvivedi
and Ms. Divya Bhalla, Advs.

versus

NEENA DUGAL & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.07.2017**

CM No.26420/2017 (for exemption).

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

CM(M) No.790/2017 & CM No.26419/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order dated 8th February, 2017 in CS No.58510/16 of the Court of Additional District Judge-02, Patiala House Court, New Delhi directing the petitioner / defendant to file the written statement within 30 days therefrom.
4. The suit from which this petition arises was filed by the respondent no.1 / plaintiff against the petitioner / defendant and the respondent no.2 / defendant, for partition of immoveable property, as far back as in the year 2013. No written statement has been filed till date inspite of the petitioner / defendant having first appeared in the suit on 23rd August, 2013.
5. This is a gross case, flying in the face of Rule I of Order VIII of Code of Civil Procedure, 1908 (CPC) limiting the time for filing the written statement within 90 days. In the time of four years since institution of suit,

within which the suit itself should have been disposed of, even the written statement has not been filed.

6. The time of 30 days from 8th February, 2017 given by the impugned order for filing of written statement also expired on 10th March, 2017. More than four months have expired since then. The written statement has not been filed till date. This petition, impugning the order dated 8th February, 2017 has come up today for the first time.

7. On enquiry, the senior counsel for the petitioner / defendant states that there is no order in the suit till now of closing the right of the petitioner / defendant to file written statement for not filing the same within 30 days of 8th February, 2017.

8. Having gone through the paper book and having not found any justification for the petitioner / defendant even now not filing the written statement, I have straightaway enquired from the senior counsel for the petitioner / defendant, whether the petitioner / defendant wants to file written statement within one week or not; else in my *prima facie* view it is a fit case where this Court, in exercise of supervisory jurisdiction, should close the right of the petitioner / defendant to file written statement.

9. The senior counsel for the petitioner / defendant, instead of pressing / arguing this petition, under instructions, states that the petitioner / defendant will file written statement on or before 11th August, 2017.

10. Though in the light of the petitioner / defendant not pressing this petition and having agreed to file the written statement, there is no need to say anything further but considering entirety of facts, it is deemed expedient to record in brief the controversy.

11. The petitioner / defendant has not filed written statement averring that the plaint was not signed and verified by the respondent no.1 / plaintiff who was abroad on the date on which it purported to be signed and verified by her at Delhi.

12. The respondent no.1 / plaintiff admits that the plaint presented before this Court does not bear her signatures. Her version, to state in brief, is that she had signed and verified a plaint but which was not on Court paper and while she was abroad the plaint was prepared on Court paper and purported to be signed and verified on her behalf and presented in this Court.

13. However immediately after the petitioner / defendant took objection in this regard, the respondent no.1 / plaintiff appeared before this Court (before which the suit was then pending) in person on 31st October, 2013 and stated that the plaint presented in this Court had been filed on her instructions. In fact in terms of earlier order dated 27th September, 2013 in the suit, a fresh plaint and applications, affidavit etc. of the respondent no.1 / plaintiff had also been filed.

14. Notwithstanding the aforesaid, petitioner / defendant has persisted in his objection and used that as an excuse to not file the written statement for four years as aforesaid.

15. It was in the aforesaid context that I asked the senior counsel for the petitioner / defendant, whether not the principle of rectification of defects of signing and verification as well as the principle of ratification applies to pleadings.

16. The senior counsel for the petitioner / defendant fairly admits that the said principles apply.

17. If that be so, then the respondent no.1 / plaintiff having rectified the defect in signing and / or having ratified the plaint initially presented, I fail to see as to what excuse can the petitioner / defendant have to still not file the written statement.

18. It was in the aforesaid background that the counsel for the petitioner / defendant has undertaken to file the written statement.

19. Reference if any required can be made to (i) ***Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh*** (2006) 1 SCC 75; (ii) ***United Bank of India Vs. Naresh Kumar*** (1996) 6 SCC 660; (iii) ***Prafulla Chandra Bidwai Vs. All India Institute of Medical Sciences*** 2003 SCC OnLine Del 244 (DB); (iv) ***Ferruccio Sias Vs. Shri Jai Manga Ram Mukhi*** ILR (1994) II Delhi 87; and, (v) ***Delhi Lotteries Vs. Rajesh Aggarwal*** 1997 (43) DRJ 448.

20. This petition is accordingly disposed of as not pressed but giving time to the petitioner / defendant to file the written statement on or before 11th August, 2017. It is however made clear that if the written statement is not so filed, the right of the petitioner / defendant to file written statement shall stand closed without any further order.

21. Needless to state that the filing of the written statement shall be without prejudice to the rights of the petitioner / defendant in the pending application under Section 340 of the Code of Criminal Procedure, 1973 (CrPC) as well as an appeal being FAO(OS) No.65/2017.

The petition is disposed of.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

JULY 28, 2017

‘pp’.. CM(M) No.790/2017