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

+ CM(M) 1266/2017

SADAQAT ALI MIRZA

..... Petitioner

Through: Mr. B.P. Singh & Mr. Ankur Yadav,
Adv.

Versus

EAST DELHI MUNICIPAL CORPORATION
OF DELHI & ANR

..... Respondents

Through: Mr. G.D. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.11.2017

CM No.40386/2017 (for exemption)

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

CM(M) 1266/2017 & CM No.40385/2017 (for stay)

3. This petition, under Article 227 of the Constitution of India, impugns the order [dated 26th July, 2017 in CS No.2578/2016 of the Court of Additional District Judge-02 (ADJ), District Shahdara, Karkardooma Courts, Delhi] allowing the application of the respondents / defendants under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) and condoning the delay of 204 days in filing the written statement to a suit stated to be filed by the petitioner / plaintiff for recovery of Rs.30 lacs odd from the respondents / defendants towards earnest money forfeited and for compensation for works done during the course of a contract entered into between the respondents / defendants and the petitioner / plaintiff.

4. Finding that the learned ADJ has given detailed reasons for condoning the delay and the aspect of condonation of delay being essentially discretionary, I have enquired from the counsel for the petitioner / plaintiff as to why the discretion exercised by the learned ADJ for reasons given and with which apparently no fault can be found, should be interfered.

5. The counsel for the petitioner / plaintiff has drawn attention to para no.4 of the application under Order VIII Rule 1 CPC filed by the respondents / defendants where delay of 69 days in re-filing the written statement is attributed to the main file relating to the matter having been misplaced. It is contended that the impugned order does not deal with the delay of the said 69 days.

6. Reliance is placed on *Mohammed Yusuf Vs. Faij Mohammad* (2009) 3 SCC 513 where the Supreme Court set aside the order of the High Court interfering with the sufficient and cogent reasons given by the Trial Court and the Revisionary Court for refusing to condone the delay.

7. Though undoubtedly the averments in para no.4 do not give any particulars as to the misplacing of the file and only state that the file was misplaced while taking the file back to office from the Court premises and on enquiry the counsel for the petitioner / plaintiff and the counsel for the respondents / defendants appearing on advance notice both state that no affidavit of the advocate was also filed along with the application but the fact remains that the advocate who had misplaced the file has filed the application under his signatures. The claim of the petitioner / plaintiff is for recovery of compensation and for earnest money which has been forfeited and which essentially requires proof of actual loss suffered and it is not

deemed appropriate to divest the respondents / defendants of the opportunity of placing its written statement on record, owing to the defaults of its advocates and officers and suffer loss of public money by being proceeded against *ex parte*.

8. As far as the judgment cited by the counsel for the petitioner / plaintiff is concerned, the same also proceeds on the premise of the discretion exercised (under Order VIII Rule 1) for cogent reasons being not liable to be interfered with by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

9. However, it cannot be lost sight that owing to the conduct of the respondents / defendants, the suit of the petitioner / plaintiff has been delayed.

10. The said delay is compensated, in addition to costs already awarded, by directing that neither the counsel for the respondents / defendants nor the officials of the respondents / defendants will be entitled to adjournments henceforth in the suit and will diligently conduct the suit and if either of them is found to be in default, he shall be personally liable for the consequences thereof.

11. With the aforesaid, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 10, 2017

‘gsr’..