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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1259/2017
SAVINA JOSHI Petitioner

Through: Mr. Satish Kumar, Advocate

versus

VED PARKASH GOEL Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.11.2017**

CM No.40076/2017 (Exemption)

1. Allowed subject to just exceptions.
2. Application is disposed of.

CM(M) 1259/2017 & CM No.40075 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 6th February, 2017 in Civil Suit No.2285/2016 of the court of Additional District Judge-02, Karkardooma Courts, Delhi) closing the right of the petitioner/defendant to file a written statement.

4. The petitioner/defendant even after such order, has waited for over nine months to bring this petition before this Court today. It is not as if the Suit Court, after closing the right of the petitioner/defendant to file written statement, posted the Suit after one year for the petitioner/defendant to be able to get this petition listed before the next date of hearing. The Suit Court, after closing the right of the petitioner/defendant to file written statement, posted the Suit for further proceedings on 19th April, 2017. The petitioner/defendant if prevented by any genuine reasons from filing the

written statement within the prescribed time, at least after 6th February, 2017 should have acted with urgency. Nothing of that sort was done.

5. It is not in dispute that the petitioner/defendant was served with the summons of the Suit on 16th August, 2016. As per the Code of Civil Procedure, 1908, the petitioner/defendant was required to file the written statement by 15th September, 2016. After 16th August, 2016, the Suit was posted on 2nd September, 2016 when the counsel for the petitioner/defendant appeared and was directed to file the written statement within the statutory period and the Suit adjourned to 24th October, 2016. On 24th October, 2016, the petitioner/defendant appearing in person took adjournment on the ground of the father of the counsel being seriously ill and the Suit was adjourned to 2nd December, 2016. On 2nd December, 2016 again, adjournment was sought on the same ground and the Suit posted to 6th February, 2017.

6. It was in the aforesaid state of affairs that on 6th February, 2017, finding that the written statement had not been filed inspite of expiry of the maximum period prescribed in the CPC for filing thereof, that the right of the petitioner/defendant to file written statement was closed.

7. The counsel for the petitioner/defendant states that the petitioner/defendant, on 19th April, 2017, filed an application for condonation of delay in filing the written statement along with the written statement. The said application was adjourned for reply and arguments to 3rd July, 2017. However, on 3rd July, 2017, the counsel for the petitioner/defendant again did not appear and sought adjournment and the matter adjourned to 11th August, 2017. On 11th August, 2017, the application was disposed of as

infructuous.

8. The petitioner/defendant has not challenged the order dated 11th August, 2017.

9. As usual, the blame is being put on the earlier counsel. This time, it is also stated that a cheque for Rs.50,000/- towards fee was given, not in the name of the counsel who was engaged but in the name of some other advocate which was encashed. The counsel is however not able to say whether the cheque pleaded was an account payee cheque or a self cheque. Considering the pleadings in this behalf, the possibility of the petitioner/defendant referring to any self withdrawal from her bank as towards fee of the counsel cannot be ruled out. Though a complaint is stated to have been made against the advocate with the Bar Council, but only to pay lip service, by dispatching a letter by post and without the matter having been pursued till now. Not a single communication was sent to the advocate complaining of the negligence, if any, on the part of the advocate and in response to which communication, the advocate could have responded.

10. I have in my earlier orders held:

- (i) that such conduct by one counsel of blaming the other counsel has led to uncontrollable delays in disposal of litigations with each advocate considering that fresh cause of action accrues with his engagement and with engagement of new advocate, the cause of action starts anew;

(ii) that unless the courts themselves started enforcing and respecting the mandate of the CPC introduced as far back as 15 years ago,

the same will continue to remain on paper.

(iii) that unless the Bench demands perfection from the Bar, perfection will not be delivered.

11. It appears that only when the Court starts taking their own process seriously that the best of the advocates who are not negligent, would be engaged by the clients, giving an opportunity to better advocates and enhancing competition at the Bar.

12. The counsel for the petitioner/defendant has argued that the written statement is already on record and the Suit is still pending.

13. In response, I have enquired from the counsel that if that was the criteria, then the written statement could be filed even along with the appeal. Merely because along with an application filed belatedly and which was also not pursued, written statement got placed on record will not enure to the benefit of the defendant.

14. The counsel for the petitioner/defendant has today also argued that the application filed for condonation of delay was infructuous.

15. Attention of the counsel is invited to judgment of this Court in ***Sada Ram Vs. Delhi Development Authority*** AIR 1974 Del 35 holding that even after the right to file written statement has been closed, the Suit Court can

entertain application for condonation of delay and the Suit Court is empowered in this regard. However, the newly appointed counsel for the petitioner/defendant also did not argue so before the Suit Court and on the contrary conceded that the application was infructuous.

16. There is no merit in the petition.

17. Dismissed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 08, 2017
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