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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 224/2019**

BIMAL CHOPRA

..... Petitioner

Through: Mr.Ajay Jain and Mr.Madhav
Dhingra, Advocates

versus

KRISHNA WANTI & ORS

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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08.02.2019

CM No. 6170/2019

Exemption allowed subject to all just exceptions.

CM(M) 224/2019

Vide the present petition, the petitioner assails the impugned order dated 19.11.2018 of the learned Court of the Additional District Judge-02 (North), Rohini Courts in CS No. 2020/16 vide which an application under Section 5 of the Limitation Act, 1963 r/w Section 151 CPC seeking condonation of delay in filing the written statement filed by the defendants No. 2 to 5 was allowed with it having been observed to the effect:

“In view of facts and circumstance, aforesaid application is allowed subject to cost of Rs.3,000/- imposed upon defendant no.1 and cost of Rs.5,000/- each imposed upon defendants No. 2 to 5”,

with the said application having been allowed subject to costs of

Rs.3,000/- imposed on defendant No.1 and Rs.5,000/- each imposed on defendants No. 2 to 5 with it having been directed that the replication be filed before the next date of hearing with as well the matter having been renotified for 2.7.2019 for admission denial of documents and framing of issues with the parties having been directed to appear in person.

On behalf of the petitioner, it is submitted that the impugned order dated 19.11.2018 is a non-speaking order as it does not set forth the reasons for which the application was allowed and that a long date of hearing has been given and that the FIR has been got registered by the petitioner against the defendants and that the suit filed by the petitioner is one for possession and thus the petitioner is thus gravely aggrieved and prejudiced by the impugned order.

Undoubtedly, it would have been appropriate for the learned Trial Court to set forth the reasons in the impugned order dated 19.11.2018 as to why the application filed by the defendants seeking condonation of delay in filing the written statement was allowed beyond merely stating “*in view of facts and circumstance, aforesaid application is allowed subject to cost of Rs.3,0000/- imposed upon defendant no.1 and cost of Rs.5,000/- each imposed upon defendants No. 2 to 5.*”.

Nevertheless on a perusal of the application which is indicated to have been filed by the defendants No. 2 to 5 before the learned Trial Court under Section 5 of the Limitation Act, 1963 read with Section 151 of the CPC which reasons set forth therein are to the effect:

“2. That the defendant nos.2 to 5 are filing their WS to the present suit. The facts and submissions made therein are true and correct to the knowledge of the applicants and contents of same may please be read as part and parcel paras of this application which are not being repeated herein for the sake of brevity.

3. That the plaintiff has filed present suit against all the applicants/ defendants on the basis of false, frivolous, manipulated and concocted allegations.

4. That on 10.05.2017, the defendants/applicants came to know about filing of the present suit by the plaintiff against them through one Shri Ratan Ratnesh who is common friend of the parties and passing of ex-parte orders against them. Soon after this knowledge, the defendants engaged a common advocate to pursue/defend the case on their behalf After inspecting the judicial file, it transpired to them that vide order dated 07.03.2017, this Hon'ble Court was pleased to proceed them ex-parte.

5. That all the defendants in the suit filed joint application U/o 9 Rule 7 R/w Sec. 151 CPC for setting aside ex-parte order dated 07.03.2017 passed against them. Vide order dated 10.07.2017, the Ld. Predecessor of this Hon'ble Court was pleased to set aside the said ex-parte order against them and they were directed to file the WS within four weeks.

6. That, vide order dated 26.10.2017, this Hon'ble Court was please to grant more time to the defendants to file their written statement as the plaintiff had not supplied complete set of plaint

and annexure to the defendants. Thereafter the plaintiff took considerable time in supplying a complete set of plaint and all documents/annexure to the defendants.

7. That to prepare the written statement on their behalf, the counsel for defendants sought clarifications from them regarding assertions recorded in alleged Agreement to Sell and Purchase dated 23-5-2016 filed by the plaintiff wherein a reference was to made to an earlier Agreement to Sell dated 16-03-1978.

8. That to clarify the aspect of this earlier agreement dated 16-03-1978; the applicants were in need of previous original titles deeds/documents of property which were in possession of defendant no.1. However despite repeated requests and demands, for the reasons best know to her, the defendant no.1 did not make available said title deeds of the property to them. She further stated that she has already filed a suit for cancellation of transfer documents relied upon by the plaintiff, taking the plea of her ownership and this plea again should be taken in the instant suit as well.

9. That during this time, the local police was continuously harassing the applicants and threatening their arrests in another false FIR No. 63/2017, U/s 448/384/ 506/ 34 IPC of P.S. Mukherjee Nagar, Delhi, filed at the instance of plaintiff. In order to prove their innocence, the applicants not only had to collect the relevant records but also time and again had to visit the police station for enquiry/investigation purposes.

10. That in order to get all previous title deeds/ documents, finally on 30.07.2018, the defendants

with the help of friends and relatives convened a Panchayat where defendant no.1 was jointly persuaded to provide all title deeds/documents to them but once again she flatly refused to provide the same to the applicants. To utter shock of applicants, defendant no.1 even threatened the applicants to throw them out of the property.

11. That defendant nos.1 to 4 are co-owners of entire undivided property including the suit property and they have all kinds of joint right, title and interest in the undivided property including the suit property. Thus they tried to contact their Counsel but he failed to give a proper response.

12. That constrained by circumstances, on 2-8-2018, the applicants engaged a new counsel who inspected the case file on same day. On inspection of court file, it transpired to the applicants that defendant no.1 already have filed her individual written statement in May 2018 itself, claiming herself to be the owner of entire undivided property. From the order sheets of relevant dates, it further transpired to the applicants that during this time, none appeared on behalf of applicants and the Counsel engaged on behalf of all defendants, got marked his attendance for defendant no. 1 only.

13. That thereafter, upon instructions of the applicants, their new counsel prepared their WS in above case which is being filed herewith the present application.

14. That in the facts and submissions made in forgoing paras, it is submitted that there is no willful delay in filing the written statement on the part of the applicants. The delay, if any, in filing

their written statement is neither intentional nor deliberate but due to the circumstances stated hereinabove.

15. That the applicants have always been vigilant and interested in pursuing their case.”,

the same do explain the non-submission of the written statement of the defendants No. 2 to 5 within time. In these circumstances, it is not considered appropriate to interfere in the impugned order dated 19.11.2018 in exercise of the jurisdiction under Article 227 of the Constitution.

The petition and the accompanying application are thus declined.

A prayer is however made on behalf of the petitioner that an expeditious date of hearing be directed to be given by the learned Trial Court qua which the petitioner may move an appropriate application in relation thereto before the learned Trial Court.

A copy of this order be sent to the learned Trial Court which has passed the impugned order.

ANU MALHOTRA, J

FEBRUARY 08, 2019/SV