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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 222/2018 & CM APPL. 7499/2018**
HDFC STANDARD LIFE INSURANCE COMPANY LIMITED
..... Petitioner

Through: Mr. Joydip Bhattacharya & Mr.
Vishnu Langawat, Advocates.

versus

ANJANA KAPOOR & ORS
..... Respondent

Through: Mr. Anshu Mahajan, Mr. Karan Arora
& Mr. Lakshay Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **07.01.2019**

Time is sought on behalf of the petitioner to produce the documents to show as to when he had applied for certified copies with the Registry of this Court.

To come up at 3.30 PM.

ANU MALHOTRA, J
JANUARY 07, 2019/NC
At 3.30 PM

The respondent no.1 is arrayed as plaintiff to the suit CS No.8850/16 out of which the impugned order dated 16.11.2017 arises.

The respondent nos. 2 & 3 to the present petition are stated to be defendant nos. 4 & 5 to the said suit as submitted by the learned counsel for the respondent no.1 i.e. the plaintiff of the said suit. In the circumstances thus the presence of the respondent nos. 2 & 3 for hearing qua the present petition is dispensed with.

Vide the impugned order, the rights of the petitioner herein to file the application by the petitioner seeking to file the written statement beyond the stipulated period of time after receipt of the summons of the suit on 02.03.2015 vide an application under Order VIII Rule 1 read with Section 149 & 151 of the CPC was declined, it having been observed to the effect that after receipt of the summons of the suit on 02.03.2015, the written statement was sought to be filed with a delay of 206 days with no ostensible reasons having been put forth by the defendant nos. 1 to 3 for the delay in the submission of the written statement.

It has been submitted on behalf of the petitioner herein arrayed as defendant no.1 to the said suit that the petitioner had not been served with the complete set of the documents along with the plaint and consequently had to apply for the certified copies thereof in the Registry of this Court before transfer of the proceedings to the District Courts on the ground of change of pecuniary jurisdiction. During the course of the arguments that have been made during the course of the day, it has been submitted on behalf of the respondent no.1 as is also reflected through the impugned order dated 16.11.2017 that the contention of the petitioner i.e. the defendant no.1 that the defendant

no.1 had not been served with the entire set of documents along with the plaint was erroneous inasmuch as what had been sought to be applied for as a certified copy in this Court by the petitioner was only a copy of order dated 09.07.2015 and it has thus been submitted on behalf of the respondent no.1 that the said contention raised on behalf of the petitioner i.e. the defendant no.1 was wholly erroneous that the complete set of the documents had not been supplied along with the plaint which prevented the petitioner from submitting the written statement. Time was thus sought on behalf of the petitioner to support the contention that the petitioner had in fact applied for more than the copy of any order on 09.07.2015 and had in fact applied for the complete set of the documents annexed to the plaint qua which learned counsel for the petitioner has now put forth the certified copy of documents applied vide diary no.9811 on 09.07.2015 which is also the diary number reflected in the list that has been submitted on behalf of the respondent no.1 herein and it is indicated that there were the number of words and pages applied for was 110 with total fees paid of Rs.600/- and apparently the documents that have been produced are much more than a copy of an order that had been applied for.

Apparently, thus the submission that has been made on behalf of the petitioner that the petitioner had in fact applied for the complete set of paper book which was received only on 31.07.2015 is correct. Learned counsel for the respondent no.1 however submits that even after receipt of the certified copies of the annexures to the plaint on 31.07.2015 there has been a gross delay in submission of the written

statement on 19.11.2015 which has not been explained by the petitioner i.e. for the period from 31.07.2015 to 19.11.2015 qua which it has been submitted on behalf of the petitioner that the petitioner had to retrieve certain original documents from its various stores which took substantial time and resulted in delay in drafting the written statement qua which also it has been submitted on behalf of the respondent no.1 i.e. the plaintiff to the suit that none of those documents that were sought to be filed were original documents and that there has been a deliberate delay by the petitioner in seeking to submit the written statement.

Inter alia the reliance is placed on behalf of the respondent no.1 on the verdict of this Court in “**Omaxe Ltd. Vs. Roma International Pvt. Ltd.**” reported in **2012(6) ILR (Del) 76** and the verdict of this Court in “**M/s Complete Dewatering Systems Pvt. Ltd. Vs. M/s DSC Limited**” reported in **2014 (211) DLT 223** to submit that the provisions of the CPC, 1908 as amended whereby a stipulated time frame has been given in submission of the written statement cannot be given a complete go by and that the discretion in granting time to file the written statement beyond the stipulated period of 30 days and the discretionary period of 90 days ought not to be granted as a matter of routine. There can apparently be no dispute to this proposition of law.

Reliance is on the other hand been placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in “**Sambhaji and Ors. Vs. Gangabai and Ors.**” in 2009 (1) AWC 1004 (SC) to contend that the rules of procedures are handmaids of justice and that

the procedural enactments ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice qua which it has been submitted on behalf of the respondent no.1 i.e. the plaintiff to the said suit that there are no extraordinary circumstances in the instant case.

It has further been submitted on behalf of the petitioner herein that the procedural laws ought not to be construed as mandatory and the procedural laws should not ordinarily be construed as mandatory in aid of justice and procedural law is always subservient to and any interpretation which will elude or frustrate any recipient of justice, ought not to be followed.

It is essential to observe that each case has to be determined on its own facts and circumstances and that the petitioner was supplied with the complete set of documents on 31.07.2015 in the instant case has been brought forth on record. There does appear to be a delay in filing of the written statement after receipt of the certified copies of documents as well qua which it has been submitted on behalf of the petitioner that the petitioner had to collect the documents from its various stores.

The proceedings before the learned Trial Court are at the stage of arguments on an application under Order I Rule 10 of the CPC filed on behalf of the defendant no.5 arrayed as respondent no.3 to the present petition seeking deletion from the array of parties and the issues in the matter have not yet been framed. Apparently, thus the respondent no.1 can be adequately compensated with costs. In the

circumstances, the impugned order dated 16.11.2017 to the extent that it does not permit the petitioner herein, who has filed the present petition seeking to file the written statement has been disallowed alone, is set aside subject to payment of costs of Rs.35,000/- by the petitioner to the respondent no.1 on the date 14.01.2019 before the learned Trial Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J

JANUARY 07, 2019/NC