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

+ CM(M) 530/2019 and CM 15644/2019 (stay)

VISHAL @ GOLDI

..... Petitioner

Through: Mr. Pradeep Sharma, Adv.
alongwith petitioner in person

versus

SANJAY KUMAR

..... Respondent

Through: Mr. Satyanarayan and Mr.
Arun, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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13.10.2022

1. This petition under Article 227 of the Constitution of India assails the order dated 18th March 2017, passed by the learned Civil Judge in CS 61825/2016 (*Sanjay Kumar v. Vishal @ Goldi*), and order dated 14th December 2018, whereby an application of the petitioner seeking review of the order dated 18th March 2017 was dismissed.

2. The order dated 18th March 2017 rejects an application filed by the petitioner, as the defendant in CS 61825/2016 ("the suit", hereinafter), for condonation of the delay in filing the written statement in response to the suit instituted by the respondent.

3. As the order dated 18th March 2017 notes, summons, in the suit, were served on the petitioner on 19th October 2016. The period of 30 days, within which, as per Order VIII Rule 1 of the Code of Civil



Procedure, 1908 (CPC), written statement could be filed, would, therefore, expire on or around 19th November 2016. The written statement came to be filed on 3rd January 2017, approximately a month and half after the expiry of the said period, but well within the maximum condonable period of 90 days stipulated in that regard by Order VIII Rule 1.

4. The application under Order VIII Rule 1 of the CPC, seeking condonation of delay, also notes the fact that, from 26th December 2016 to 1st January 2017, Courts were closed.

5. The ground urged in the application seeking condonation of delay in filing the written statement was that the maternal grandmother of the petitioner was unwell, and that the petitioner had to accompany his mother to his village in Punjab where his maternal grandmother was staying. The application sought to urge that, owing to the illness of the maternal grandmother of the petitioner, he could not return in time to file the written statement.

6. The impugned order dated 18th March 2017 rejects the contention, thus:

“A perusal of file reveals that the defendant was served on 19.10.2016 and the written statement has been filed by the defendant only on 03.01.2017 i.e. after the period of about 3 months. The ground taken by way of the present application is that he had gone to Amritsar as his maternal grand mother was not well. A perusal of the present application reveals that nowhere it has been mentioned as to on which date the defendant went to Punjab, what was the illness of his grand mother and when did he return back from Punjab. Accordingly, I am of the considered



opinion that no sufficient cause has been shown by the defendant vide the present application to condone the delay in filing the written statement. Hence, the present application is dismissed.”

7. The delay in filing the written statement cannot be said to be inordinate. The suit was an ordinary suit, and not a commercial suit. Applications for condonation of delay in filing pleadings, in non-commercial suits, are required to be dealt with leniently, with a view to ensure that the parties are not prejudiced in prosecuting their respective cases. It goes without saying that, if the written statement of the petitioner is not permitted to be taken on record, it would amount to completely foreclosing the petitioner’s right to defend himself against CS 61825/2016 instituted by the respondent against him. Adjudicating of any adversarial lis, without allowing full opportunity to both sides to contest their respective stands, does disservice to the cause of justice. While ensuring that any lackadaisical or recalcitrant attitude is discouraged, the Court has to bear in mind the fact that, at the end of justice, its duty is to subserve the cause of justice.

8. The delay in question being only of around less than a month and a half and given the ground taken by the petitioner for condonation of delay, I am of the opinion that the learned Civil Judge has been unduly harsh in rejecting the petitioner’s application.

9. Mr. Satyanarayan, learned Counsel for the respondent sought to contend that, against the order dated 18th March 2017, an earlier petition under Article 227 of the Constitution of India had been



preferred by the petitioner, which was dismissed for non-prosecution. He also seeks to point out that, against the order dated 18th March 2017, the petitioner had moved an application seeking review of the said order, which came to be dismissed by the order dated 14th December 2018, which is also impugned in the present case.

10. As I am of the opinion that the order dated 18th March 2017 is itself unjustified, I do not deem it necessary to enter into these aspects of the matter.

11. Accordingly, the impugned order dated 18th March 2017 is quashed and set aside. The application of the petitioner under Order VIII Rule 1 of the CPC, which was dismissed by the said order accordingly stands allowed. The written statement filed by the petitioner on 3rd January 2017 is directed to be taken on record in the suit, which shall thereafter proceed in accordance with law.

12. The petition is accordingly allowed with no order as to costs. Miscellaneous application is also disposed of.

13. The costs deposited by the petitioner are directed to be released to the respondent along with any interest accrued thereon, on the respondent approaching the Registry in that regard.

C. HARI SHANKAR, J

OCTOBER 13, 2022

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