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

% Judgment delivered on: 07.03.2023

+ CM(M) 616/2019 & CM APPL. 18395/2019

DEEP CHAND LUNIA & ANR Petitioners

versus

AKHIL GARG Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Sunil Dutt Dixit, Advocate.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioners challenge the order dated 27.08.2018 in CS No. 827/18 titled as “Akhil Garg vs. Deep Chand Lunia & Ors.” whereby the learned Trial Court had directed taking off record the written statement filed by the petitioner/ defendant on the ground that it was filed beyond 90 days as also for the reason that there were no signatures appended by the petitioner/ defendant on the written statement as well as the verification paragraph.

2. Mr. Sunil Dutt Dixit, learned counsel appearing for the petitioner/

defendant submits, that as per the judgment of the Supreme Court in *Kailash vs. Nanhku and Ors*, reported as (2005) 4 SCC 480 and *Bharat Kalra vs. Raj Kishan Chabra* reported as 2022 SCC Online SC 613 the written statement may be taken on record on compensatory costs being paid by the defendant to the plaintiff.

3. Learned counsel also submits that the failure to append signatures on the written statement as well as the verification is a mere irregularity, which can be rectified. He also submits that the affidavit which accompanied the written statement was duly signed and attested by the defendant.

4. Learned counsel submits that by inadvertence and oversight, the signatures appears to not have been be appended on the written statement as well as the verification clause contained therein. He submits that this ought not to have been a reason for the written statement to be taken off record and the defense being struck off.

5. No one appears for the respondent/ plaintiff.

6. No one had been appearing for the respondent/ plaintiff for the last many hearings and in view of the fact that the respondent had been served and in fact had appeared previously and the fact that this petition has been pending since the year 2019, this Court is of the considered opinion that the present petition can be disposed of even in the absence of the respondent/ plaintiff.

7. This Court has considered the submissions made on behalf of learned counsel for the petitioner/ defendant as also perused the impugned order.

8. The learned Trial Court has committed an error in procedure

insofar as the condonation of delay of filing the written statement beyond the 30 days period as stipulated in Order VIII Rule 1 of the CPC, 1908 is concerned extends to a period of 90 days beyond 30 days. The petitioner/defendant was served with the summons on 10.04.2018 and the written statement, as noted by the impugned order, was filed a little beyond 90 days, which would still be well within the period of 120 days as stipulated by Order VIII Rule 1 of the CPC. The written statement was filed on 17.07.2018 and thus, would fall within the extended period of 90 days beyond the 30 days period, as stipulated under Order 8 Rule 1 of the CPC, 1908.

9. Insofar as the absence of signatures of the defendant on written statement as well as verification clause is concerned, the same would be a mere irregularity and can always be rectified. The point of consideration which was overlooked by the learned Trial Court is that the said written statement was accompanied by a duly signed and attested affidavit of the petitioner/ defendant No.1 and would fall within the provisions of Order VI Rule 15 of the CPC, 1908.

10. Thus, on the basis of above, it can safely be presumed that the absence of signatures on the written statement as well as the verification clause thereon is a mere irregularity and can be rectified subsequently by the petitioner.

11. The irregularity aforesaid was not of such a nature that would entail a drastic measure of written statement itself being struck off and for that reason, the impugned order is unsustainable in law and ought to be set aside.

12. In view of the aforesaid, the impugned order is quashed and set

aside.

13. The learned Trial Court is directed to take the written statement on record and permit an opportunity to the petitioner/ defendant No.1 to rectify the irregularity to its satisfaction.

14. In view of the above, the present petition is disposed of. The pending application also stands disposed of.

MARCH 07, 2023/nd

TUSHAR RAO GEDELA, J.

