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

% ***Date of Judgment: 30.01.2019***

+ **RFA(OS) 24/2018**

VIKAS JAIN Appellant
Through: Mr. Sachin Sharma, Proxy counsel.

versus

BRIJWASI INFRATECH PVT LTD Respondent
Through: Ms. Shalini Kapoor and Ms. Dikshant
Khanna and Ms. Bindita Chaturvedi,
Advocates.

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 18.04.2017 by which two applications filed by the appellant herein; one under Section 151 CPC dated 12.01.2017 for seeking condonation of delay of 211 days in filing the written statement and another application filed by respondent/plaintiff under Order VIII Rule 10 CPC was dismissed.
2. Adjournment is sought on behalf of counsel for the appellant on the ground that he is not available. Proxy counsel who is present in the court submits that he is not ready with the matter. We are informed by the counsel for respondent that a final decree has since been passed in the matter.

3. In this case admittedly, the appellant herein was served with a copy of the summons on 19.03.2015. Four weeks' time was granted to file the written statement. Contention of the defendant is that his counsel advised him that instead of filing the written statement, he should move an application seeking rejection of the plaint and accordingly an application under Section 151 CPC was filed on 30.04.2015. The impugned order shows that this application remained under objection up till 03.08.2015. The application came up for hearing on 07.08.2015, when the counsel withdrew the application seeking leave to file the same under the correct provisions of law. On the same day i.e. 07.08.2015, the second application under Order VIII Rule 10 CPC was filed by plaintiff (respondent herein). An application under Order VII Rule 11 CPC filed by the appellant herein was dismissed on 06.10.2015. Written statement was filed on 05.11.2015. The written statement was not accompanied by any application seeking condonation of delay. The written statement was filed with a delay of 211 days. The submission made before the learned Single Judge was that since the application for rejection of the plaint had been filed, no written statement was required to be filed. Reliance was placed on two judgements of the Apex Court reported as Civil Appeal No. 3710/2012 ***C.N. Ramappa Gowda Vs. C.C. Chandregowda (dead) by LRs and Anr.*** and Civil Appeal No. 6162/2005 ***Shantilal Gulabchand Mutha Vs. Tata Engineering & Locomotive Co. Ltd. & Anr.*** However, the Learned Single Judge has reached a conclusion that the judgements sought to be relied upon were not applicable to the facts of the present case.

4. The legislative intent behind fixing the upper limit of 90 days is to eradicate the unnecessary delays and only in exceptional circumstance, such delays must be condoned. The Apex Court has crystallized the law on delay in filing the written statement in the case of **Vinay Singh vs. Rinku Gupta** reported as 2010 SCC OnLine Del 3238, wherein the court has held as follows:

"14. In Saleem Advocate Bar Association vs. Union of India, (2005) 6 SCC 344, Supreme Court held:-

"In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the Court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

(Emphasis added)

.... 15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is

not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred McAlpine & Sons that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

5. We find nothing exceptional on the record to show as to why the written statement was not filled within the prescribed time. It is also an admitted fact that the written statement was not accompanied by any application seeking condonation of the delay. Accordingly, we are of the view that the learned Single Judge has rightly dismissed the case.
6. Relevant portion of the judgment of the learned Single Judge is extracted below:

"The present suit is a suit for partition filed by the plaintiff against the defendant. The plaintiff has relied upon a registered sale deed dated 23.04.2010 in his favour to support his submission that he is the undisputed owner of 3/4th share of the suit property (bearing No.3, Block-A-1, Krishna Nagar, Delhi). By virtue of another sale deed dated 29.10.2010, he had become owner of another 1/4th share in the balance 1/4th property. This contention has been

disputed. However an admission has been made by the defendant in his application under Order VII Rule 11 of the Code to which attention has been drawn by the learned counsel for the plaintiff i.e. I.A. No. 17127/2015 (under Order VII Rule 11 of the Code filed by the defendant) at page 9 para 5(h) wherein the defendant has admitted that the share of the defendant is $1/16^{\text{th}}$ in the total share of $1/4^{\text{th}}$; meaning thereby that he has admitted that he has share of $1/16^{\text{th}}$ in the balance $1/4^{\text{th}}$ in the property which is the subject matter of second sale deed i.e. the sale deed dated 29.10.2010.

Learned counsel for the defendant at this stage submits that although there is no quarrel to the first sale deed dated 23.04.2010 and it is admitted; the second sale deed dated 29.10.2010 is the subject matter of another litigation where an injunction has been granted in favour of the defendant and against the plaintiff qua the said sale deed. This Court notes this submission. At the same time, this Court also notes the admission made by the defendant in the aforementioned application (I.A. No. 17127/2015) wherein the defendant has admitted that he has $1/16^{\text{th}}$ share in the balance $1/4^{\text{th}}$ which is the subject matter of the sale deed dated 29.10.2010. Although the plaintiff in terms of this sale deed (dated 29.10.2010) is claiming a greater share but he submits that since there is an admission by the defendant that he is the owner of $1/16^{\text{th}}$ share (in the balance $1/4^{\text{th}}$ share), a preliminary decree of partition qua this admission be passed. This Court endorses this submission of the plaintiff.”

7. In this backdrop, a preliminary decree was passed. Taking into consideration the fact that neither the written statement was filed within the stipulated time nor was it accompanied with any application seeking extension of time or condonation of delay. Therefore, we do not find any infirmity with the order of the Learned Single Judge.

8. We do not find any merit in the present appeal. Accordingly, the present appeal is dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

JANUARY 30, 2019

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