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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 869/2018 & CM APPL. 30590/2018, CM APPL. 30592/2018
JASVIR KAUR & ORS Petitioner
Through: Mr. Narender Kr. Sharma, Standing
Counsel.

versus

RAMMI Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **10.01.2019**

The respondent has already been served in the matter and has been represented on 12.09.2018, 20.09.2018, 24.09.2018 and 14.12.2018 but is not present now and in view thereof the submissions have been allowed to be made on behalf of the petitioner in the instant case.

The petitioner assails the impugned order dated 16.04.2018 of the Court of the ADJ-06, Central in CS No.16973/16 whereby an application under Order VIII Rule 1 of the CPC filed on behalf of the petitioners herein as the defendant to the said suit seeking condonation of delay in filing the written statement of the defendants, - was declined and the written statement filed by the defendants i.e. the petitioners herein was not taken on record, it having been observed to the effect that the defendants had filed the written statement on 02.06.2017 which was after the lapse of the limitation

period having not been filed within a period of 90 days and has been filed with lapse of 12 days. On behalf of the petitioner it has been submitted that the proceedings of the date 20.02.2017 of the learned trial Court as reflected in the impugned order dated 16.04.2018 read to the effect:

20/02/2017

*Present: Sh. Vimal Kumar Dhingra, Ld. Counsel for plaintiff.
Rammi Vs.*

Jasbir Kaur @ Baby & Ors.

Sh. Raj Kumar Sharma, LD. Counsel for defendants.

*Arguments addressed on the leave to defend
application. Put up for orders at 04:00pm.*

-Sd-

ADJ06/Central/Delhi

20/02/2017

At 04:00pm.

Present: None.

*Vide my separate order dictated and announced in the
open Court today, the application under Order 37 Rule 3 (5)
CPC r/w Section 151 CPC is allowed.*

*Put up for filing WS on behalf of defendants
on 02/06/2017.*

-Sd-

ADJ--

06/Central/Delhi

20/02/2017

It has thus been submitted on behalf of the petitioners that the application under Order 37 Rule 3 (5) r/w Section 151 of the CPC

having been allowed vide order dated 20.02.2017 of the learned trial Court with specific directions having been put for to the effect that “*put up for filing WS on behalf of defendants on 02.06.2017*”, the submission of the written statement by the defendants i.e. the petitioners herein on the date 02.06.2017 as directed vide order dated 20.02.2017 of the learned trial Court could not have been faulted with and that thus the written statement of the defendants ought to have been taken on record. Vide the impugned order it has been observed to the effect that the defendants had sought to interpret the order dated 20.02.2017 to have granted to the defendants i.e. the petitioners herein the opportunity to file the written statement on 02.06.2017 and not within the limitation period prescribed under Order VIII Rule 1 of the CPC with no other reason for delay assigned in the application which submissions were held to be untenable and that the order dated 20.02.2017 could not be interpreted as having granted an opportunity to bypass the compliance of the legal provision and not to file the written statement within the limitation period and which was thus too indicated as per the impugned order vide para 7 to have been filed within a lapse of 12 days.

Reliance is *inter alia* placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in the case ***Mr. Shaikh Salim Haji Abdul Vs. Mr. Kumar & Ors.***, a verdict dated 18.11.2005 in Appeal (civil) No.6907/2005 with facts *para materia* to the facts of the instant case in which case, a suit for partition, separate possession and perpetual injunction had been sought by the defendant arrayed as

appellant to the case relied upon and had sought time to file the written statement and by order dated 29.10.2003, the trial Court granted time till 17.11.2003 and on the said date, another application was filed for extension of time to file the written statement and the time was allowed till 19.02.2004 and as 19.02.2004 was a holiday, the written statement was filed on 20.02.2004 but that the trial Court refused to accept the written statement on the ground that the written statement was filed beyond the period of 90 days. Vide the verdict relied upon on behalf of the petitioner herein it has been *inter alia* observed to the effect:

“Learned counsel for the appellants submitted that when the court itself had granted time to file the written statement by 19.2.2004 and that being a holiday the written statement was filed on 20.2.2004, the view taken that the written statement could not have been filed within 90 days is clearly untenable.

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not

be precluded from participating in them.

Additionally a party cannot be made to suffer if the court has committed a mistake if for the sake of argument it is held that the Court had mistakenly granted time.

In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit and impossibilia the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey (1987 (4) SCC 398), Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459) and Mohammod Gazi v. State of M.P. and others (2000(4) SCC 342).”

Significantly, the aspect of the learned trial Court in the said case relied upon on behalf of the petitioners herein having specified a date of submission of written statement is taken into account with observations *inter alia* to the effect that “*additionally a party cannot be made to suffer if the court has committed a mistake if for the sake of argument it is held that the Court had mistakenly granted time.*” As the facts of the case relied upon on behalf of the petitioners herein as observed by the Hon’ble supreme Court are in *pari materia* to the instant case, the impugned order dated 16.04.2018 in CS No.16973/16 is set aside and the written statement of the defendants to the said suit i.e. the petitioners herein before the learned trial Court is directed to

be taken on record as being the written statement of the defendants in the said suit.

The learned trial Court shall proceed in accordance with law in terms of the order hereinabove.

The petition is disposed of.

The copy of this order be sent to the learned trial Court.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 10, 2019

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