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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 4th February, 2020

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CM(M) 130/2020

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr. Rajiv Bansal, Senior Advocate
with Mr. Faisal Naseeh, Ms. Parul
Panihi, Mr. Anant Nigam and Mr.
Rajat Sejwal, Advocates.
(M:9971936265)

versus

ANUP KUMAR & ANR

..... Respondents

Through: Mr. Rishi Vohra, Proxy counsel.
(M:9999498955)
Mr. Ajay Aroraa and Mr. Kapil Dutta,
Advocate for SDMC.
(M:9999322675)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 4459/2020(Exem)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM APPL. 4458/2020(Delay)

2. Delay in filing is condoned. Application is disposed of.

CM(M) 130/2020

3. The impugned order dated 30th August, 2019, dismissed the application under Order VIII Rule 1 CPC filed by the DDA seeking condonation in filing of the written statement. Both counsels agree that the written statement has been filed by the DDA within 180 days. The Trial Court, however, came to the conclusion that no proper reasons were given

for condoning the delay.

4. The Court has perused the reasons set out in the application under Order VIII Rule 1 CPC filed by the DDA seeking condonation of delay. Considering the fact that this is a suit for declaration and injunction in respect of a MIG flat where there is an allegation that the Respondent No.1 herein/Plaintiff has encroached upon some public land and a show cause notice was issued in respect thereof, which is challenged in the suit, this Court is inclined to condone the delay since the written statement has been tendered within the overall time period of 180 days. Recently in ***Desh Raj v. Balkishan (D) through proposed LR Ms. Rohini [Civil Appeal No. 433/2020, decided on 20th January, 2020]*** the Supreme Court has struck a difference between provisions of CPC as applicable to commercial and non-commercial disputes. It has been reiterated as under:

“12. Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure. Whereas commercial disputes [as defined under Section 2(c) of the Commercial Courts Act, 2015] are governed by the CPC as amended by Section 16 of the said Act; all other non-commercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

13. The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd., 2019 AIR(SC) 2691 but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute qua the amended

Order VIII Rule 1 CPC.

14. As regard the timeline for filing of written statement in a noncommercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A. Chunawala and Co., 2018 SCC 639 holds the field. Unamended Order VIII Rule I, CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.”

5. The delay in filing the written statement accordingly stands condoned subject to payment of Rs.15,000/- as costs to the Plaintiff. The costs shall be tendered on or before the next date in the Trial Court. Subject to the costs being tendered, the written statement shall be taken on record and the suit shall proceed in accordance with law.

6. With these observations the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 04, 2020
Dj/A.S.