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

+ **CM (M) 171/2020**

CHAKRESH KUMAR & ANR. Petitioners
Through: Mr. Vikas Gautam, Advocate.
(M:9810993476)

versus

BIMLA DEVI & ORS. Respondents
Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **11.02.2020**

CM APPL. 5508/2020 (exemption)

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

CM (M) 171/2020 & CM APPL. 5506/2020 (stay)

2. The present petition challenges the impugned order dated 28th November, 2019 by which the Trial Court has permitted the Defendant's amended written statement to be taken on record, though the same was delayed.

3. The submission of Id. counsel for the Petitioners is that on 28th March, 2017, Defendant Nos.1 to 4's right to file the amended written statement was closed. Thus, only an application for review of the said order could have been filed, however, the Defendants filed an application under Section 151 CPC along with another application under Section 148 CPC read with Section 5 of the Limitation Act, 1963. He submits that the scope of review would have been very limited and the proper procedure ought not to have been given a go-by simply by entertaining these two applications.

4. A perusal of the orders which have been placed on record shows that on 19th January, 2017, the Defendants were directed to file the amended written statement within a period of two weeks. Thereafter, on 28th March, 2017, the

Court records that the amended written statement has been filed on 10th February, 2017. Since the same was not accompanied with any application for condonation of delay, the Defendants right to file the amended written statement was closed by the Trial Court.

5. Thereafter, the Defendants moved two applications i.e., an application under Section 151 CPC for recalling the above order dated 28th March, 2017 and another application under Section 148 read with Section 5 of the Limitation Act, 1963, for taking the amended written statement on record. The prayer of the Defendants was that the delay in filing the amended written statement was attributable to the attorney of Defendant Nos.1 to 4. Detailed averments have been made in the application as to the cause of delay. Vide the impugned order dated 28th November, 2019, the Trial Court has exercised its discretion in favour of the Defendants, who had delayed filing of the amended written statement by about 7 days.

6. The impugned order, in the considered view of this Court, is not an order that warrants any interference under Article 227 of the Constitution of India, inasmuch as the Trial Court has rightly recorded that the endeavour of the Court should be to adjudicate the matter on merits. Though the filing of these two applications may not be strictly as per CPC, the terminology or title of an application would not govern the relief to be granted, if the court deems it fit. In any event, an order condoning 7 days' delay in filing the amended written statement would not be an order which ought to be interfered with under Article 227.

7. The petition is accordingly dismissed and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 11, 2020/dk