

\$~178

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

+ **CM(M) 199/2020 and CM APPL. 6655/2020, 6656/2020**

RAM

..... Petitioner

Through: Ms. Diwyani Sehgal, Advocate (M:
8178213168).

versus

KAMLA DEVI

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

19.02.2020

1. The present petition challenges the impugned orders dated 22nd February, 2019 and 28th August, 2019, which in effect closed the right of the Petitioner/Defendant No. 1 (*hereinafter, "Defendant No. 1"*) to file the written statement.
2. A suit for partition was filed by the Plaintiff - Smt. Kamla Devi against her siblings in respect of the estate of her father, late Shri. Bishamber Dayal. The suit was filed on 28th May, 2019. Summons in the suit were issued on 5th July, 2019. Summons were served on the Defendant No. 1 on 8th July, 2019.
3. On 28th August, 2019 the Defendant No. 3 appeared in person. None appeared for Defendant No. 1, however, there was a proxy counsel who appeared on behalf of the Defendant No. 3 as lawyers were abstaining from work. On the said date itself, since the written statement was not filed, the

right to file written statement was closed. The Defendant No. 1 thereafter moved an application seeking recall of the order dated 28th August, 2019 along with the written statement on 4th October, 2019 which was however, not permitted to be taken on record vide order dated 22nd November, 2019. The Court came to the conclusion that there was no strike of lawyers on 28th August, 2019.

4. Ld. counsel appearing for Defendant No. 1, on the basis of an order passed by another Civil Judge in the same Court, submits that lawyers were in fact abstaining from work. This finding of the Trial Court is thus not correct. Moreover, whenever lawyers are abstaining from work, proxy counsels are appointed by the Bar Association and accordingly no adverse orders usually passed against the clients on the said date.

5. A perusal of the record shows that the written statement has in any case being filed within the 90 days period from the date of service of the summons.

6. Advance copy of the present petition had already been served upon the Respondent's counsel appearing in the Trial Court. Ld. counsel for Defendant No. 1 submits that she has personally spoken to Mr. Sudhir Batra and Mr. Rohit Khanna, Advocates. However, there is no appearance on behalf of the Respondents. Moreover, the expectation that on a day when lawyers are abstaining from work, no adverse orders are usually passed, cannot be said to be an unreasonable expectation. Litigants cannot be prejudiced due to lawyers' abstinence. Under these circumstances, the written statement is directed to be taken on record subject to Rs. 5,000/- as costs to be paid to the Plaintiff. The costs to be paid on or before the next date in the Trial Court.

7. The petition with all pending applications is disposed of. *Dasti*

PRATHIBA M. SINGH, J.

FEBRUARY 19, 2020
MR