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

+ **CM (M) 948/2019 & CM APPL. 28532/2019**

ZAFAR ALI & ANR.

..... Petitioners

Through: Mr. Akhil Sachar, Advocate.
(M:9891105069)

versus

DR. SMT. NIRMALA G. JOSEPH & ORS.

..... Respondents

Through: Mr. Rajiv Kumar, Advocate.
(M:9811540237)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **30.01.2020**

1. By the impugned order dated 22nd May, 2019, the right to file the written statement to the counter-claim was closed and the written statement to the counter-claim was not taken on record.
2. In the present petition a detailed order was passed by the Predecessor Bench, wherein the Court has, at the interim stage, permitted the written statement to the counter-claim to be taken on record. The said order dated 2nd July, 2019 is set out below:

“1. Learned counsel for the respondents has entered appearance, and seeks time to file a reply to this petition. Reply be filed within two weeks. Rejoinder thereto, if any, be filed within one week thereafter.

2. The present petition under Article 227 of the Constitution of India, is directed against orders passed by the Additional District Judge-01 (South) District Courts, Saket, dated 22.05.2019 and 04.06.2019. By the order dated 22.05.2019, the written statement of the petitioners/plaintiffs to the counter claim filed by

the respondents/defendants has been taken off the record. A review application in respect thereof has been dismissed by the order dated 04.06.2019.

3. The undisputed facts are that the suit in question was filed by the plaintiffs in 2008 before the Court of the Civil Judge, Aligarh Court. It has been transferred to the Court of the Additional District Judge (South), District Courts, Saket, by an order of the Supreme Court dated 05.02.2019. During the pendency of the matter before the Aligarh Court, the defendants had filed a counter claim. By an order dated 12.10.2011, the defendants were directed to amend the counter claim in respect of valuation and court fees. The amendment was carried out only on 09.10.2017 and even at that stage, the deficient court fees (on the counter claim) were not paid. By further orders dated 11.04.2019 and 23.04.2019 passed by the Additional District Judge, after transfer of the suit, the defendants were directed to file deficient court fees, failing which it was directed that the counter claim shall stand automatically rejected. The deficient Court fees were, in fact, deposited by the defendants on 23.04.2019 and 05.05.2019.

4. The plaintiffs filed a written statement to the counter claim on 22.05.2019. However, by the impugned order, it was held that the written statement suffered from inordinate delay of about 11 years and was, therefore, taken off the record. Issues were framed in the suit as well as the counter claim. The plaintiffs' application for review of the said order was dismissed by the second impugned order dated 04.06.2019.

5. In the circumstances mentioned above, I am of the view that the plaintiffs have a good prima facie case for acceptance of the written statement to the counter claim. I am informed that the matter is listed before the Trial Court today for plaintiffs' evidence, i.e., 02.07.2019. I do not consider it appropriate to stay

proceedings in the suit, particularly in view of the fact that the order of the Supreme Court, dated 05.02.2019, specifically directed expeditious disposal of the suit and set a time limit of 6 months from the date of the receipt of the record for this purpose. The Trial Court was also directed to conduct a trial on a day to day basis and take steps in accordance with law to ensure the attendance of the witnesses.

6. It is therefore directed, without prejudice to the rights and contentions of the parties in this petition, that the plaintiffs are entitled to place the written statement to the counter claim on the record of the Trial Court. If necessary, the Trial Court may frame additional issues and proceed thereafter in accordance with law.

7. In view of the fact that the learned counsel for the respondents states that he has been instructed only yesterday in this petition, although he has been appearing before the Trial Court as well, and that he wishes to contest this petition by filing a reply, these interim directions are passed subject to the outcome of this petition. The Court may also consider and pass an appropriate order of costs, if necessary, at the appropriate stage.

8. A copy of the order be given *dasti* under the signatures of the Court Master.

9. List on 29.08.2019.”

3. In the meantime, *ld.* counsels for the parties have reported that on 6th August, 2019 a settlement has been recorded by the Trial Court between the parties that both parties agree to share 50% each of the suit property, however, the detailed memorandum of settlement is yet to be filed. The said order dated 6th August, 2019 is set out below:

“Both the parties have been exploring the

possibility of settlement for quite some time. During the course of hearing in the day, passover were taken by both the parties to work out the settlement.

Now, both the counsels submit that parties have amicably settled their disputes and submit that both the parties have agreed that the suit property shall be shared jointly by both the parties to 1/2 share each and the suit property shall be disposed off and the proceeds shall be shared equally by the plaintiffs as well by the defendants.

Joint statements of both the plaintiffs and defendant no.1, who represents the remaining defendants as well is recorded. The terms of the settlement have been explained to both the parties in vernacular to which they have agreed.

Both the counsels seek two weeks time to give memorandum of settlement containing the details as to how the settlement is to be given effect to. Both the counsels submit that parties have also identified a buyer namely sh. Ankur Maheshwar S/o Sh. Ashok Kumar Maheshwari who is also present in the court.

*Put up for filing of memorandum of settlement, if any, on **21.08.2019**”*

4. The counsel for the Petitioner submits that the share of each of the parties is now agreed and admitted, hence, the petition is to be disposed of by recording that the dispute is settled. Ld. counsel for the Respondents submits that a detailed memorandum has not been filed on record and hence, the settlement has not yet fully fructified.

5. After perusing the order dated 6th August, 2019, it is clear that there has been a settlement between the parties, however, the modalities of the settlement have not yet been taken on record or filed by the parties. If the

modalities of the settlement is not filed, then the Court would proceed with the matter. The written statement to the counter-claim filed by the Petitioner pursuant to the interim order dated 2nd July, 2019 shall be taken on record. The effect of the agreement on respective shares as recorded in order dated 6th August 2019, shall then be considered by the trial court. For filing of the memorandum of settlement, containing the detailed modalities, the parties are permitted to seek an adjournment for at least six weeks, as requested, before the Trial Court.

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

PRATHIBA M. SINGH, J

JANUARY 30, 2020

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