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

Date of decision: 25th November, 2021

+ **C.R.P. 72/2021 & CM APPL. 35332/2021, 42027/2021 & 42028/2021**

NC JAIN

..... Petitioner

Through: Mr. Shailender Dahiya, Advocate
versus

JASWANT LAL ANEJA & ANR.

..... Respondents

Through: Mr. Ankit Jain, Mr. Mohit Gupta, Mr.
Vishal Saxena and Ms. Mohina
Anand, Advocates for R-1
(M: 8904697393)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPL. 42027/2021 (u/O 22 Rule 4)

2. This is an application filed on behalf of the Petitioner under Order XXII Rule 4 CPC seeking impleadment of Legal Representatives (*hereinafter "LRs"*) of Respondent No.1, Mr. Jaswant Lal Aneja, who is stated to have passed away. The deceased has two LR- Sh. Rajiv Aneja and Ms. Mona Aneja- both of whom are sought to be impleaded as Respondents No.1(a) & 1(b). Application is allowed.

3. The amended memo of parties has been filed and brought on record. Application is disposed of.

CM APPL. 42028/2021 (for delay)

4. This is an application seeking condonation of delay in filing the application under Order XXII Rule 4 CPC for impleadment of LR's of Respondent No.1. Delay of 32 days is condoned.

5. Application is disposed of.

CRP 72/2021 & CM APPLs. 35332/2021 (for stay)

6. The present petition has been filed challenging the impugned order dated 10th December, 2019 passed by the Ld. Senior Civil Judge (North West), Rohini Courts, Delhi (*hereinafter "Trial Court"*) in ***C.S. No.61532/2016*** titled "***Jaswant Lal Aneja v. North MCD and Ors.***". By the impugned order, the application under Order VIII Rule 1 filed on behalf of the Petitioner/Defendant No.6 (*hereinafter "Defendant No.6"*) seeking condonation of delay in filing his written statement was dismissed, consequently leading to the written statement not being taken on record.

7. The suit being ***C.S. No.61532/2016*** was filed by the Plaintiff seeking declaration as also permanent and mandatory injunction. The Plaintiff lives in Flat No.293, Ground Floor, Nimri Colony, Phase-I, Near Ashok Vihar, Delhi-110052 (*hereinafter "suit property"*). The Defendant No.6 claims to be the owner of the first floor of the suit property i.e., Flat No.294. It is the case of the Plaintiff that Defendant No.6 has indulged in unauthorized and illegal construction, leading to enormous difficulty to the Plaintiff due to the heavy seepage, and encroachment. It is also the case of the Plaintiff that the purchase of the first floor by the Defendant No.6 is claimed to be without the roof rights, which is contrary to the conditions. The load bearing walls are alleged to have been removed, and the entire construction has also been

changed, leading to severe seepage in the Plaintiff's flat on the ground floor of the suit property. Thus, the reliefs sought in the suit are as under:-

"It is therefore most respectfully prayed that this Hon'ble court may be pleased to:

1. Dismiss the present application for condonation of delay in filing the written statement by defendant No.6.

2. Pass any such other order or directions which this Hon'ble court may deem fit in the light of abovementioned facts and circumstances of the case."

8. In the suit, the Defendant No.6 was served on 7th May, 2016. The appearance of Defendant No.6 is noticed vide order dated 10th May, 2016 passed by the Trial Court. The written statement was filed by the Defendant No.6 only on 25th January, 2017, and was accompanied by an application seeking condonation of delay in filing the written statement. The said application stated the reasons for the delay as under:

"1. That the above noted case/suit is pending before this Hon'ble Court and the same is fixed for 25-1-17.

2. That the defendant no.5 has received the summon in the month of May, but due to illness the defendant no.5 could not file his written statement before this Hon'ble Court, therefore, the marriage of the son and daughter of the applicant was solemnized in the month of October and November respectively.

3. That non-filing of the written statement is neither intentional nor deliberately but due to the reasons as mentioned above, which is beyond the control of the applicant.

4. That if the written statement of the applicant has not been taken on record, the applicant would suffer irreparable loss and injury in any manner."

9. No documents were admittedly filed along with the said application seeking condonation of delay, leading to the dismissal of the same.

Accordingly, the written statement filed by the Defendant No.6 on 25th January, 2017 was not taken on record.

10. Mr. Dahiya, Id. Counsel appearing for the Defendant No.6 before this Court, relies upon the wedding invitation card of both the children of the Defendant No.6- Mr. Vikas Jain and Parul Jain- who were married in November, 2016, as also the fact that the wife of Defendant No.6 had suffered from Chikungunya in September, 2016. None of these documents were placed before the Trial Court. Mr. Dahiya, Id. Counsel submits that, at best, the delay would be of a period of 170 days. Accordingly, he prays for the delay in filing the written statement to be condoned.

11. On the other hand, Mr. Gupta, Id. Counsel for the Respondent No.1/Plaintiff (*hereinafter "Plaintiff"*) submits that the diagnostic laboratory's report which has been placed on record, in fact, shows that the wife was not detected with Chikungunya. He further relies upon the various order sheets of the Trial Court which have been placed on record and submits that, in any event, there is no justification for non-filing of written statement as the Defendant was continuously appearing before the Trial Court.

12. The Court has perused the record. In the opinion of this Court, the application seeking condonation of delay filed before the Trial Court appears to be absolutely sketchy, and there were hardly any details which were given in the said application.

13. In response to the above observation, Mr. Dahiya, Id. Counsel for the Defendant No.6, submits that the Counsel who drafted the said application advised the client that the grounds specified therein were justified, and

therefore, no further details ought to be given. No documents were also filed with the said application.

14. A perusal of the order sheets of the Trial Court also shows that from May, 2016, the Defendant No.6 has been continuously appearing before the Trial Court, either in person or through his counsel. Thus, it is completely inexplicable as to why the written statement was not filed by Defendant No.6.

15. The nature of the suit is that it seeks cancellation of the lease in favour of the Defendant No.1 therein, and the alleged transfer of the first floor of the suit property in favour of Defendant No.6. Thus, the suit would have extremely severe consequences for the Defendant No.6 as also the Plaintiff. The wedding invitation card which has been placed on record dates back to November, 2016. It is also claimed that during the said period, the Defendant No.6 faced enormous difficulty due to demonetization.

16. In view of the above discussion, this Court was inclined to condone the delay of 170 days in filing the written statement subject to heavy costs of Rs.75,000/- to be paid to the Plaintiff, within two weeks.

17. At this stage, Mr. Gupta, Id. Counsel for the Plaintiff claims that the Defendant No.6 has further transferred the suit property in which he claims rights, in violation of the statement made by him before the Trial Court, vide order dated 25th January, 2017 in **CS No.61532/2016**.

18. In this regard, in response to a specific query put to Defendant No.6 by this Court, Mr. Shailender Dahiya, Id. Counsel for Defendant No.6 sought time to take instructions. The matter was passed over and on second call, Mr. Dahiya has informed this Court that the first floor of the property has been sold by his client to one Ms. Sushila Devi, wife of Baljeet, on 17th

August, 2021. He submits that the same was necessitated due to the wedding of the daughter of Defendant No. 6 on 30th June 2021, to raise finances.

19. The Plaintiff, Mr. Aneja, who has appeared through video conferencing, submits that the aforementioned transfer is in complete violation of the statement given by Defendant No. 6 which was recorded vide Trial Court's order dated 25th January, 2017, where Defendant No. 6 had categorically undertaken to the Court that he would not create any third-party interest in the first floor of the suit property.

20. This Court is of the opinion that, from what is emerging from the record and the response of the counsel, the conduct of Defendant No.6 clearly shows that he is completely in violation of the statement and the undertaking given by him before the Trial Court, vide order dated 25th January, 2017. The said Defendant has completely concealed from the trial court as also this Court that he has already transferred his rights in the property qua which relief is being sought by the Plaintiff. If the Defendant no.6 has no rights in the property, there can be no reason to allow his written statement to be taken on record. The order dated 25th January 2017 is clear and categorical to the effect that the Defendant no.6 undertook not to create any third-party interest in the first floor of the suit property. The said order dated 25th January, 2017 has been extracted herein below:

“ Written statement on behalf of defendant no. 6 filed with the application for condonation of delay in filing the written statement on behalf of the defendant no. 6.

Counsel for plaintiff states that he will file the reply to the application of condonation of delay in filing the written statement.

Counsel for defendant no. 6 also states that he shall approach the MCD to make the construction in conformity with MCD norms.

Defendant no. 6 also states that he is not going to create any third party interest in the first floor of the suit property.

At request, matter is adjourned for further proceedings on 11.04.2017.

Interim order to continue.”

21. On a query from the Court as to how the present petition is maintainable, without the disclosure as to the creation of third-party interests in the first floor of the suit property, being made before the Court, Mr. Dahiya, Id. Counsel submits that the petition was filed in March, 2020. However, it was listed for the first time on 6th October, 2021. In any event, this Court is of the opinion that all the above facts relating to the transfer of the first floor of the suit property by the Defendant No.6, have been concealed from the Court. The present Petition may have been first filed in March 2020 but it was finally filed in October 2021. There is no disclosure in the petition that the Petitioner/Defendant no.6 has transferred rights in the property. This amounts to gross concealment and suppression of material facts, apart from being in violation of the undertaking given to the trial court. In these facts, therefore this Court is also not inclined to condone the delay in filing of the written statement. The Petition is accordingly dismissed.

22. The Plaintiff is permitted to take action in accordance with law, under Order XXXIX Rule 2A CPC, and also seek relief against the MCD *qua* the

lease in respect of the suit property. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 25, 2021

mw/Aman/AD

