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

Date of Decision: 09.02.2021

+ **FAO(OS) 60/2020 & C.M. No. 29846/2020**

VINOD KUMAR KAD AND ORS Appellants

Through: Mr. Anand Nandan, Adv.

versus

GIRISH KUMAR KAD AND ORS Respondents

Through: Mr. Lalit Gupta, Adv. for R- 2 to 5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 10 of the Delhi High Court Act 1966, assails the order dated 03.09.2020 passed in I.A. No. 7670/2020 in CS (OS) 636/2019 by the learned Single Judge condoning the delayed filing of the written statement by the respondent nos.2 to 5/defendants. The appellants, who filed the suit in question, have also assailed the subsequent order dated 20.10.2020 passed by the learned Single Judge rejecting their prayer for review of the order dated 03.09.2020.

2. The appellants preferred a suit for declaration, permanent injunction and partition in respect of the property bearing no. B-27, Satyawati Colony, Ashok Vihar, Phase-III, Delhi 110052. The suit came to be listed before the learned Single Judge on 05.02.2020, on which date the Court, while issuing summons in the suit and notice in the applications, directed the defendants to file the written statement within a period of 30 days. On 13.03.2020, in view

of COVID-19 pandemic gripping the world, the Court issued a notification suspending its regular functioning w.e.f. 16.03.2020.

3. It turns out, the respondents failed to file the written statement either within the 30 day-period granted by the Court or within the period of 90 days provided under Order VIII Rule 1 of the Code of Civil Procedure, 1908. The written statement was filed only on 31.08.2020 alongwith an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the written statement, primarily on the ground that the said delay had been occasioned on account of the respondents' inability to visit their counsel for drafting and filing the written statement on account of the COVID-19 pandemic. The said application has been allowed by learned Single Judge under the impugned order dated 03.09.2020, whereafter the appellant's application seeking review thereof was also rejected on 20.10.2020.

4. The present appeal has been filed primarily on the ground that even though regular functioning of this Court had been suspended with effect from 16.03.2020, an office order permitting mentioning of matters on designated links to request a hearing through video conferencing was issued on 22.04.2020, followed by an office order dated 08.05.2020 which permitted online filing of all kinds of pleading. It has, therefore, been contended that there is no reason as to why the respondents did not file their written statement through online mode, within the time granted to them.

5. Learned counsel for the appellant submits that the respondents nos. 2-5 had ample opportunities to file the written statement on time and, therefore, the learned Single Judge erred in condoning the delay in filing the written statement, especially when it was beyond the maximum permissible

period of 120 days under the Delhi High Court (Original side) Rules 2018.

6. We are unable to find any merit in the submission of learned counsel for the appellant. It is an admitted position that the time within which the respondents could file their written statement in terms of the 2018 Rules expired during the period when the pandemic had already set in and, as a consequence, regular functioning of Courts across the country, including the Apex Court as also this Court, stood suspended. In response to this situation, the Supreme Court took *suo moto* cognizance of the problems faced by litigants across the country, in filing pleadings within the period of limitation and, consequently, on 23.03.2020 passed the following order in *SMW (C) No. 3/2020* titled ***In Re: Cognizance for Extension of Limitation:***

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate

Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

7. When the Apex Court has clearly passed directions to accommodate difficulties encountered by litigants in filing pleadings on time, and the spirit of the reasoning in the impugned order is in line with the course set by the Supreme Court, we are of the opinion that the learned Single Judge was absolutely justified in condoning the delay in filing written statement. In fact, this order passed by the Supreme Court extending the period of limitation is continuing even as on date, for which purpose we may refer to a recent order passed by the Supreme Court on 17.12.2020 in C.A. NO. 4085/2020 titled ***M/s SS Group Pvt Ltd Vs. Aaditiya J. Garg & Anr.***

“The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No.3 of 2020 was continuing. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed.

In the circumstances, we allow these appeals, set aside the order passed by the National Commission and direct that (i) the written statement filed by the appellant shall be taken on

record; and, (ii) the matter shall thereafter be proceeded with expeditiously and in accordance with law.”

8. We are also unable to agree with the learned counsel for the appellant that merely because online filing was permitted by this Court with effect from 08.05.2020—or even from 22.04.2020, COVID-19 pandemic stopped hampering regular filings. We cannot lose sight of the fact that in most cases, when it comes down to filing written statements, the defendant often has to visit his counsel personally at his office to give appropriate instructions for preparation thereof.; unfortunately, this has not been possible for many litigants in the last one year owing to lockdown as well as the social distancing practices imposed on account of the pandemic. We, therefore, see no reason to disregard the respondent’s version that the written statement could not be filed within the time granted by the Court, since the respondents could not visit the office of their counsel, especially between March-July 2020, when the pandemic had just set in. In fact, even as on date, social distancing is the norm and, notwithstanding partial resumption of physical hearing at the Court, many counsel are still entering appearance virtually. On that note, we may observe that even though we are holding physical court today for which learned counsel for the respondent is present in Court, learned counsel for the appellant has chosen to join the proceedings only through video conferencing. He has duly been accommodated in this manner by us, through hybrid mode hearing. When such an accommodation—on the ground of the pandemic, is being granted to the learned counsel for the appellant, there is absolutely no reason as to why the respondents should be deprived of a similar accommodation, especially

since there are orders of the Supreme Court in this regard.

9. We, thus, see no reason to interfere with the impugned orders. The appeal is dismissed with costs of Rs. 10,000/- payable to the Delhi High Court Legal Services Authority within four weeks.

REKHA PALLI, J

VIPIN SANGHI, J

FEBRUARY 9, 2021_{/kk}

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