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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 495/2022 & CM No. 25273/2022, CM No. 25274/2022

HARISH BHARDWAJ Petitioner
Through: Mr.Vinay Shankar Dubey, Adv.

versus

MEHSAR JAHAN Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
26.05.2022

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1. The impugned order dated 5th April, 2022, passed by the learned Senior Civil Judge/Rent Controller (“the learned SCJ/RC”) rejects an application filed by the petitioner, as the defendant before the learned SCJ/RC, under Section 5 of the Limitation Act, 1963, in CS 297/2015 6662/16 (*Mehsar Jahan v. Harish Bhardwaj*) (hereinafter referred to as “the suit”), seeking condonation of delay in filing the written statement in response to the suit instituted by the respondent against the petitioner. Aggrieved, the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

2. Given the parameters of the controversy, one need not venture into the details of the dispute between the petitioner and the respondent, forming subject matter of the suit.



3. Suffice it to state that summons, issued by the court in the suit, were served on the petitioner, as the defendant in the suit, on 21st November, 2015 (erroneously recorded, in para 7 of the impugned order as “21.11.2019”). The time for filing written statement, in response to the plaint, as provided by Order VIII Rule 1¹ of the Code of Civil Procedure, 1908 (CPC) expired on or around 21st December, 2015. Prior thereto, the matter was listed before the court on 16th December, 2015, on which date the request, of the petitioner, for grant of 15 day’s time to file written statement was allowed. The petitioner was, therefore, directed to file the written statement within 15 days of 16th December, 2015.

4. The written statement ultimately came to be filed only on 4th September, 2019, accompanied by an application under Section 5 of the Limitation Act, which stands dismissed by the order under challenge.

5. In the interregnum, the dispute was referred, by the learned SCJ/RC to mediation on 30th April, 2016. The matter remained

¹ **ORDER VIII**

Written statement, set-off and counter-claim

1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.



pending before the Mediation Centre till 19th July, 2016, when it was returned as not settled.

6. The application under Section 5 of the Limitation Act, which stands dismissed by the impugned order dated 5th April, 2022, reads thus:

“1. That the above mentioned suit is pending before this Hon'ble Court and fixed for today i.e. 04.9.2019. That today the defendant no.1 has filed written statement separately. That the suit of the plaintiff is based on false, concocted, baseless and false Information and on the false complaints.

2. That since institution of the suit, the said suit was referred to the mediation and the talks were going on. But, some days back, the mediation has been failed. Therefore, It is necessary to file the written statement to proceed the above mentioned suit further.

3. That the defendant no.1 did not file the written statement in time as talks were going on in the mediation. That the defendant No.1 made his best efforts to search out two litigations referred in the written statement but the defendant no.1 could not get the copies/records of the said suits. That non filing of written statement in the above suit is bonafide and not intentional. There is delay of 3 years 8 months and 25 days in filing the written statement. That the delay in filing the accompanying written statement may kindly be condoned and the written statement may be taken on the record.

PRAYER

In view of the above mentioned facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to condone the delay of 3 years 8 months and 25 days in filing the written statement and the written statement may be taken on the record. It is prayed accordingly.”



7. To call the application for condonation of delay perfunctory would be doing it undeserved credit.

8. Para 2 of the application starts with the statement that “since institution of the suit, the said suit was referred to the mediation and talks were going on”. This is, quite obviously, not true. Consequent to service of summons issued in the suit on the petitioner, the petitioner appeared before the learned SCJ/RC on 21st November, 2015. On 16th December, 2015, a further period of 15 days was granted to file written statement. The matter was next listed on 10th March, 2016 when there was no appearance on behalf of the petitioner. It was only on the next date of hearing, i.e. 30th April, 2016, that the matter was referred to mediation. As such, clearly the opening statement in para 2 of the Section 5 application of the petitioner, that, since institution of the suit, the suit was referred to mediation, was incorrect.

9. Equally incorrect is the very next statement, in para 2 of the Section 5 application, which avers that “some days back”, the mediation had failed. The matter was returned, consequent to failure of mediation, on 19th July, 2016, as not settled. It is impossible to understand how, therefore, in an application under Section 5, filed on 4th September, 2019, the petitioner could contend that the mediation had failed “some days back”.

10. The only ground urged, in the Section 5 application, which finds place in para 3 thereof, are that (i) the written statement could



not be filed “in time as talks were going on in the mediation” and (ii) that the petitioner was making efforts to “search out two litigations referred in the written statement” but was unable to obtain copies thereof.

11. Neither ground has any substance whatsoever. The mediatory exercise commenced on 30th April, 2016 and concluded, fruitlessly, on 19th July, 2016. The time for filing written statement expired in December 2015. (To a query from the Court, as to the date when summons were served on the petitioner, learned Counsel for the petitioner is unwilling to give a candid answer. However, if one were to assess the period of 3 years, 8 months and 25 days, reckoned back from 4th September, 2019, when the written statement was filed before the learned SCJ/RC, the date of service of summons would appear to be 10th December, 2015). The matter having been referred to mediation long thereafter, it is obvious that the first ground urged in para 3 of the Section 5 application, i.e. that the petitioner could not file the written statement in time as talks were going on in the mediation, is incorrect.

12. The second ground urged in para 3 was that the petitioner was making efforts to search out two litigations referred to in the written statement but could not obtain copies thereof. The learned SCJ/RC has correctly noted that no particulars, whatsoever, of the said two litigations is forthcoming in the Section 5 application.

13. The Section 5 application is also completely non-committal on



the aspect of how the pendency of the mediation, or, the inability to obtain copies/records of the two litigations to which, according to the applicant, reference was to be made in the written statement, inhibited the petitioner from filing the written statement within the statutory period.

14. This is a petition under Article 227 of the Constitution of India. The Court is concerned, in such a case, only with whether the manner in which the court below has exercised jurisdiction calls for supervisory correction in exercise of the power of superintendence vested in this Court. The Court does not examine the merits of the order under challenge.

15. In the present case, not only is there no such error, in the approach by the learned SCJ/RC, as calls for any interference by this Court in exercise of its supervisory jurisdiction; equally, there is no substantial ground made out, in the application for condonation of delay, filed by the petitioner under Section 5 of the Limitation Act, which is completely bereft of material particulars, and is *ex facie* perfunctory and void of any cogent details.

16. The delay in filing the written statement is not minor. It is inordinate, to the extent of 3 years, 8 months and 25 days, even as per the application for condonation of delay.

17. No case is, therefore, made out for this Court to interfere with the impugned order.



18. The petition is accordingly dismissed *in limine*.

C. HARI SHANKAR, J

MAY 26, 2022/kr

