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

+ CM(M) 823/2019 & CM APPL. 27522/2022

BALJEET SINGH & ANR Petitioners

Through: Mr. Vikas Yadav, Advocate

versus

SUDESH CHHIKARA & ANR Respondents

Through: Mr. Jaipal Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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

% **27.10.2022**

1. This petition under Article 227 of the Constitution of India assails the following order dated 27.11.2018 passed by the learned Additional Senior Civil Judge (“the learned ASCJ”) in Suit CS 455/2017 (*Sudesh Chhikara vs. Baljeet Singh*) to the extent the impugned order allows the application of the respondent – plaintiff under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (“CPC”) and rejects the application of the petitioners – defendants under Order VII Rule 11 CPC:

“27.11.2018

Through this common order, both the applications, one filed by the defendants under Order 7 Rule 11 read with Section 151 CPC and another filed by the plaintiff no.1 under Order 8 Rule 1 CPC shall be disposed off.

Present: Ld. Counsel for the plaintiff.

Arguments have already been heard.

It is contended by the defendants that the suit is without any cause of action and the same is liable to be rejected, it is also contended that there are no documents filed by the plaintiffs in this case to support their pleadings and the same is filed just to extract money from them.

It is the contention of the plaintiffs and that the plot is different from the suit property. It is also contended that the plaintiffs are relying upon a Family Settlement and that the husband of the plaintiff no.1 was the only son amongst six daughters.

So far as the application under Order 8 Rule 1 CPC is concerned, it is the plea taken by the plaintiff that the defendants were duly served on 21.04.2017 but have filed the written statement only on 04.08.2017 with a delay of more than 3 months. It is the plea of the defendants that they are old aged persons and that the delay may be condoned.

Record perused.

This is a suit for declaration and mandatory injunction pending since April, 2017 wherein, issues are yet to be settled. Admittedly, summons/notice issued to defendant no. 1 received back refusal report on 21.04.2017 and the similarly, defendant no.2 was also served on the very same day i.e. 21.04.2017. Admittedly, written statement was filed by them only on 04.08.2017 and that too with a delay of 2 and half months. Admittedly, no application for seeking condonation of delay was filed by the defendants alongwith the written statement for the reasons best known to them. It need not be mentioned that at the time of disposal of the application under Order 7 Rule 11 CPC, only the averments of the plaint are to be seen. In these circumstances, application filed by the defendant under Order 7 Rule 11 CPC is dismissed being devoid of merits and application filed by the plaintiff under Order 8 Rule 1 CPC is allowed. Consequently, the defence of the defendants is hereby struck off.

Both the applications stand disposed off.

Be listed for Admission/Denial of documents and also for framing of issues on 15.02.2019.”

2. Insofar as the defendants’ application under Order VII Rule 11 of the CPC is concerned, it is clear from a reading of the impugned order dated 27th November 2018 that the learned ASCJ has rejected

the application with no reason whatsoever. As such, the rejection, by the learned ASCJ, of the petitioners' application under Order VII Rule 11 CPC is liable to be set aside, even on that score.

3. Adverting, now, to the respondents' application under Order VIII Rule 1 CPC, the respondents had, by the said application, sought striking off the written statement filed by the petitioner, as the defendants in the suit, on 4th August 2017, from the record of the suit. The impugned order allows the said application.

4. Learned counsel for the petitioners does not dispute the facts stated in the impugned order regarding the receipt of summons in the suit and filing of written statement. He acknowledges that summons in the suit were received by his client on 21st April 2017 and that written statement was filed by then only on 4th August 2017. He also acknowledges the fact that the written statement was not accompanied for any application of condonation of delay. He, however, submits that as his clients were elderly people, the court, taking a sympathetic view, allowed the written statement to be taken on record.

5. Mr. Jaipal Singh, learned counsel appearing for the respondent – plaintiff, on the other hand, points out that the written statement was taken on record on 4th August 2017 behind his back, after he had left the court, for which purpose he has drawn the attention of the court to the following order, penned by the Reader of the court on 4th August 2017:

“04.08.2017

Ld. Presiding Officer has gone for judicial training at Delhi Judicial Academy, Dwarka today.

Present: Counsel for plaintiff.
Defendant in person.

As per instructions of Ld. Presiding Officer, now to come up for purpose already fixed on 27.09.2017.

(Reader)
04.08.2017

At 11:45 AM

At this stage, Counsel for defendant, a/w defendant appeared and filed written statement on behalf of defendant and an application u/o 7 rule 11 r/s. 151 CPC.

(Reader)
04.08.2017”

Analysis

6. The proviso to Order VIII Rule 1 CPC permits that the written statement, which has not been filed within the period of 30 days envisaged by the Order VIII Rule 1, to be taken filed on any other day, within a maximum period of 90 days from the date of service of summons, for *reasons to be recorded in writing*. Needless to say, the noting dated 4th August 2017, of the Reader attached to the court to the recording filing of the written statement, has no reasons. The impugned order dated 27th November 2018, too, contains no reasons for allowing the written statement be taken on record and, consequently, allowing the respondents’ application under Order VIII Rule 1 of the CPC.

7. No doubt the impugned order records the petitioners’ contention that his clients were old and aged persons as well as his request that, for that reason, the delay in filing the written statement should be condoned. It does not proceed, however, to accept the said.

8. It is acknowledged by learned counsel for the petitioner that the written statement was filed beyond the maximum period of 90 days envisaged by the order under Order VIII Rule 1 of the CPC though, in view of the judgment of the Supreme Court in *Rani Kusum v. Kusum Devi*¹ and *Kailash vs. Nanhku*², the said maximum period does not constitute a mandatory outer limit.

9. Nonetheless, the learned ASCJ was required to provide reasons for allowing the respondents' application under Order VIII Rule 1A CPC. No such reasons are forthcoming in the impugned order.

10. As such, this Court is constrained to set aside the impugned order. Both the applications i.e. the application of the petitioners under Order VII Rule 11 of the CPC and the application of the respondents under Order VIII Rule 1 CPC are restored. The learned ASCJ, who is directed to consider the said applications *de novo* and, after hearing both sides and following the principles of natural justice, decide the said applications with a speaking and reasoned order.

11. The petition is allowed with no orders as to costs.

C.HARI SHANKAR, J.

OCTOBER 27, 2022

ns

¹ (2005) 6 SCC 705

² (2005) 4 SCC 480