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

+ CM(M) 1030/2019

ROHIT MITTAL

..... Petitioner

Through: Mr. Rupesh Kumar, Adv.

versus

SIKHA AGGARWAL & ANR

..... Respondents

Through: Mr. Satya Prakash Gupta and
Mr. Sunil Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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20.09.2022

1. Summons in CS 605/2018 (*Shikha Aggarwal v. Rohit Mittal*) were served on the petitioner, who was the defendant in the said suit, before the learned Additional District Judge (“the learned ADJ”) on 27th August 2018. Written statement was, therefore, required to be filed within 30 days, condonable upto maximum of 90 days from the date of service of summons, as per Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC)¹.

2. Written statement came to be filed by the petitioner on 30th November 2018, i.e. 4 days beyond the maximum period of 90 days. The ground urged for taking the written statement on record, despite

¹ **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.



having been filed beyond the maximum condonable period envisaged in Order VIII Rule 1 of the CPC, was that the petitioner's father was seriously ill and had to be regularly subjected to dialysis, owing to which reason the petitioner was not in a position to devote time to the case.

3. By order dated 12th December 2018, the aforesaid application of the petitioner, under Order VIII Rule 1 of the CPC, was dismissed by the learned ADJ, holding that no documentary proof, regarding illness of the petitioner's father, had been placed on record. It was further observed that it was settled law that illness of the parties or their parents was no ground to condone delay.

4. As such, the written statement filed by the petitioner on 30th November 2018 was taken off the record.

5. The petitioner filed an application seeking review of the aforesaid order dated 12th December 2018, which has come to be dismissed by order dated 9th May 2019, also impugned in the present petition. It appears that certain medical documents were filed with the application, which have not been placed on record before this Court.

6. Be that as it may, *vide* order dated 9th May 2019, the learned ADJ held that no ground for review of the order dated 12th December 2018, within the parameters of Order XLVII of the CPC, existed. As such, the review application was dismissed.



7. The petitioner has approached this Court thereagainst, under Article 227 of the Constitution of India.

8. In the first place, I am not aware of any law, much less “settled law”, that illness of the parties or their parents is no ground to condone delay. If, on account of illness of either party, or her, or his, close relative, the concerned party is not in a position to attend to the litigation, I see no reason why delay cannot be condoned on that ground. The observation of the learned ADJ that it was settled law that illness of the parties or their parents was no ground to condone delay is, therefore, obviously erroneous. Of course, the Court would, in each case, have to be convinced that the ground urged is genuine, and the handicap real.

9. Adverting to the facts of this case, the petitioner’s written statement was filed a mere four days beyond the maximum period of 90 days envisaged by Order VIII Rule 1 of the CPC. The Supreme Court has held in *Kailash v. Nanhku*² and *Rani Kusum v. Kanchan Devi*³ that the maximum period for filing the written statement, as set out in Order VIII Rule 1 of the CPC, is not cast in stone, but may be relaxed if the facts of a particular case warrant such relaxation. The written statement filed by the petitioner was filed a mere four days beyond the statutory maximum period of 90 days. The ground urged by the petitioner was that his father was seriously unwell.

² (2005) 4 SCC 480

³ (2005) 6 SCC 705



10. The learned ADJ observed, in the order dated 12th December 2018, that no medical documents, evidencing the illness of the petitioner's father, had been filed. Instead of rejecting the application on that ground, the learned ADJ ought, perhaps more advisedly, to have asked the petitioner to produce medical documents in support of the plea, in case he felt the need to convince himself on that score.

11. Be that as it may, medical documents, in support of the plea, were apparently filed with the review application. Even otherwise, when such a ground is taken and is urged by Counsel before the Court, and delay in question is of mere 4 days beyond the maximum period stipulated in Order VIII Rule 1 of the CPC, a certain degree of latitude is expected by the Court so as to ensure that the right of the petitioner to prosecute his case by all means known to law is not frustrated on a technicality.

12. In the circumstances, I am of the opinion that the petitioner ought to be allowed to place his written statement on record and that the impugned orders dated 12th December 2018 and 9th May 2019, which hold otherwise, cannot sustain in facts or in law.

13. Accordingly, the impugned orders dated 12th December 2018 and 9th May 2019 are quashed and set aside.

14. However, learned Counsel for the petitioner undertakes not to take any adjournment from the learned Trial Court. In case learned Counsel is not available on any particular date, alternate arrangements



would be made. Any request for adjournment would result in vacation of the present order and revival of the orders under challenge.

15. The petition is allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J

SEPTEMBER 20, 2022

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