

\$~23(Appellate)

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

+ CM(M) 794/2022 & CM APPL. 35118/2022

ROOPA

..... Petitioner

Through: Mr. Anilendra Kant Srivastava,
Adv.

versus

ABHIJEET SANGWAN & ANR.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

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27.10.2022

1. This petition under Article 227 of the Constitution of India assails the order dated 15th October 2019, passed by the learned Additional District Judge (learned ADJ) adjudicating the application of the petitioner under Order VI Rule 17 of the Code of Civil Procedure, 1908 (the CPC) in CS 1125/2018 (*Abhijeet Sangwan v. Roopa*), whereby the learned ADJ has rejected the said application.

2. The present petition has been filed by the petitioner on or around 29th July 2022.

3. To a query from the Court, as to why this Court should entertain such a challenge when nearly 3 years after the order under challenge have passed, Mr. Anilendra Kant Srivastava, learned Counsel for the petitioner, submits that (i) the impugned order was passed on the ground that by the proposed amendment, the petitioner was seeking to wriggle out of certain admissions made in the written statement filed by the petitioner by way of response to the suit instituted by the respondent, (ii) at the time of passing of impugned order, an application of the respondent under Order XII Rule 6 of the

CPC, seeking a decree on the basis of very same admissions was pending before the learned ADJ, (iii) the said application was dismissed as withdrawn on 22nd February 2020, (iv) the petitioner, thereafter, moved application under Sections 151 and 152 of the CPC before the learned ADJ on 21st October 2020 for correction of certain errors in the impugned order dated 15th October 2019, (v) in the meanwhile, the COVID-19 pandemic intervened and (vi) the application of the petitioner under Sections 151 and 153 of the CPC came to be decided only on 29th April 2022, whereafter the petitioner filed the present petition.

4. The circumstances underscored by Mr. Srivastava, learned Counsel for the petitioner do not, in my view, make out a case for belated entertaining, by this Court of the present petition, instituted nearly three years after the impugned order came to be passed. It is correct that the learned ADJ rejected the petitioner's application under Order VI Rule 17 of the CPC on the ground that, by the proposed amendment, the petitioner was seeking to resile from the admissions contained in the written statement filed by the petitioner. In my considered opinion, there was no impediment whatsoever on the petitioner raising a challenge to the impugned order dated 15th October 2019 at that time or at any proximate date. The mere fact that, at the time, an application of respondent under Order XII Rule 6 of the CPC, seeking a decree on the very same admissions, was pending, could not be said to constitute a justifiable cause for the petitioner waiting for three years to challenge the impugned order.

5. The application under Order XII Rule 6 of the CPC, preferred

by the respondent, came to be dismissed as withdrawn on 22nd February 2020. Even thereafter, the petitioner did not choose to move the present petition. Instead, the petitioner, six months later, moved an application under Sections 151 and 153 of the CPC before the learned ADJ on 21st April 2020. The COVID-19 pandemic, too, therefore, cannot offer solace to the petitioner. The *terminus ad quem* of the amnesty period available due to the COVID-19 pandemic stands fixed by the Supreme Court as 28th February 2022¹. The present petition has been filed nearly six months even after that date.

6. Laches, when inordinate, eviscerate the right to relief. The law on this stands settled as far as back as in *Tilokchand Moti Chand v. H.B. Munshi*².

7. There is no reasonable basis for this Court to, at this belated stage, overturn the apple cart by entertaining the present petition, nearly three years after the impugned order came to be passed.

8. Accordingly, without entering into the merits of the impugned order, the present petition is dismissed on the ground of unexplained delay and laches.

9. No costs.

C.HARI SHANKAR, J

OCTOBER 27, 2022/hk

¹ Refer Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117

² (1969) 1 SCC 110