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

+ CM(M) 983/2022 & CM APPL.40973/2022

MR VIPIN GARG & ANR. Petitioners

Through: Mr. Sumit Rajput, Adv.

versus

MR RAJESH GARG Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

12.10.2022

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1. In view of the limited nature of the controversy involved, short notice had been issued in the present petition on 16th September 2022, returnable today with the specific observation that the matter would be taken up and decided today.

2. Despite the matter having been called out twice, there is no appearance on behalf of the respondent. I have accordingly heard Mr.Sumit Rajput, learned Counsel for the petitioners and have perused the record.

3. This petition under Article 227 of the Constitution of India, assails order dated 17th August 2022 passed by the learned Additional District Judge (“the learned ADJ”) in CS DJ 577/2021 (***Rajesh Garg v. Vipin Garg***). By the said order, the learned ADJ has refused to take on record the written statement filed by the petitioners, as the defendant in the suit, on 1st June 2022.



4. Summons in the suit were received by the petitioners on 9th February 2022. Order VIII Rule 1 of the CPC postulates 30 days for filing a written statement, extendable by 90 days on sufficient cause being shown in that regard, for reasons to be recorded in writing. Learned Counsel for the petitioners acknowledges the fact that no application was tendered, by the petitioners, seeking extension of time, while presenting the written statement on 1st June 2022.

5. Though the written statement was indeed tendered within the extendable period of 90 days envisaged by Order VIII Rule 1 of the CPC, no procedural fault can be strictly found with the learned ADJ in refusing to take the written statement on record as no application seeking extension of time or condonation of delay was ever filed by the petitioners.

6. That being said, the refusal to take the petitioners' written statement on record, despite the written statement having been tendered within the condonable period under the proviso to Order VIII Rule 1 of the CPC would appear to be unduly harsh. This court, while exercising jurisdiction under Article 227 of the Constitution of India, is required to keep the interests of justice in mind and to ensure that due opportunity is granted to both parties to prosecute their respective causes.

7. I am of the opinion that the petitioners would be entitled, at the very least, to move an application before the learned ADJ seeking



extension of time/condonation of delay till 1st June 2022.

8. This tentative view having been expressed in the order dated 16th September 2022 and as no reply has been filed to the petition nor has any appearance been entered today, it appears that the respondent, too, has no objection to the above course of action.

9. Accordingly, the order dated 17th August 2022 passed by the learned ADJ in CS DJ 577/2021 (*Rajesh Garg v. Vipin Garg*) is quashed and set aside. The petitioners are permitted to move an application before the learned ADJ seeking condonation of delay in filing the written statement. The application would be considered on its own merits in accordance with law after providing an opportunity to both sides.

10. Let the application be moved on or before 17th November 2022. The learned ADJ would proceed with the application in accordance with law as already noticed hereinabove.

11. The petition is allowed to the aforesaid extent with no orders as to costs. Miscellaneous application stands disposed of.

C. HARI SHANKAR, J

OCTOBER 12, 2022/kr