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

% Judgment delivered on: 03.05.2023

+ CM(M) 27/2023 & CM APP No. 993/2023

DIVYA MEHROTRA @ DIVYA TANDON Petitioner

versus

JYOTI TANDON & ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Jai Prakash Gautam, Mr. Rajeev Gupta and Mr. Sandeep Yadav, Advocates.

For the Respondents : Mr. Vaibhav Dang, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner/ defendant No.1 challenges the order dated 12.10.2022 in CS DJ 629/22 titled as “*Jyoti Tandon vs. Divya Mehrotra*”, whereby the right of the petitioner/ defendant No.1 to file her written statement was closed on the basis that no written statement had been filed within the prescribed period.

2. Mr. Jai Prakash Gautam, learned counsel appearing for petitioner/ defendant No.1 submits that the petitioner/ defendant No.1 was served with the summons of the suit on 02.08.2022, however, the written

statement was not filed despite the passage of the prescribed period.

3. Learned counsel also submits that due to the disputes between the daughter-in-law (petitioner/ defendant No.1) and the mother-in-law (respondent/ plaintiff), the petitioner was of the opinion that the same would be amicably settled and on that premise had not contacted any lawyer and had also not filed the written statement.

4. *Per contra*, learned counsel appearing for the respondent/ plaintiff submits that the petitioner/ defendant No.1 is a Director in a Private Limited Company and it cannot be fathomed as to on what basis such a highly educated person made such submissions, which are not acceptable either on facts or on law.

5. Learned counsel submits that the order which has been passed by the learned Trial Court is in accordance with the procedure prescribed by the Code of Civil Procedure, 1908, and ought not to be interfered with by this Court.

6. This Court has considered the rival submissions and perused the impugned order as well as the other documents on record.

7. In the considered opinion of this Court, keeping in view the judgments of the Supreme Court in ***Bharat Kalra vs. Raj Kishan Chabra*** reported as 2022 SCC Online SC 613, ***Salem Advocate Bar Association, T.N vs. Union of India***, reported as (2005) 6 SCC 344, ***Kailash vs. Nanhku and Ors***, reported as (2005) 4 SCC 480 and also by the Division Bench of this Court in ***Jamaluddin vs. Nawabuddin & Ors.*** Neutral Citation Number - 2023/DHC/001211, wherein it has been consistently held that the parties ought to litigate on merits and not on technicalities. Particularly, the judgment of Supreme Court in *Bharat*

Kalra (supra), reiterates the same and permits the filing of the written statement in ordinary civil suits even beyond the time as prescribed by Order VIII Rule 1 of the CPC, 1908. However, the entitlement is held as against compensatory costs to be paid to the other side.

8. In view of the aforesaid settled law, this Court is of the considered opinion that the impugned order so far as deprives the right of the petitioner/ defendant No.1 to file its written statement is set aside.

9. The petitioner/ defendant No.1 may file her written statement within one week from today with an advance copy to the learned counsel for the other side.

10. The learned Trial Court shall take on record the written statement so filed by the petitioner/ defendant No.1 and proceed in accordance with law.

11. The aforesaid directions are subject to a payment of Rs. 35,000/- as costs to the defendant/ plaintiff within one week from today against a valid receipt. The receipt shall be placed on record of the learned Trial Court via proper index.

12. The present petition along with pending application is disposed of in the above directions.

TUSHAR RAO GEDELA, J.

MAY 03, 2023

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