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

% Judgment delivered on: 17.02.2023

+ CM(M) 65/2023 & CM APPL. 2090/2023

MANOJ KUMARI SHUKLA AND ANOTHER Petitioner

versus

AMOL GARG Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ratnesh Tiwari, Advocate

For the Respondent : Mr. O.P. Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioners challenge the orders dated 04.06.2022 and 19.11.2022 passed by the learned Trial Court in CS No. 370/2021 titled '*Amol Garg vs. Manoj Kumari @ Manoj Kumar Shukla*' whereby the learned Trial Court had closed the right of the petitioners/defendants to file the written statement on the ground that despite service on 21.09.2021 neither any application for condonation of delay nor any application seeking extension of time to file the written statement was filed by the petitioners/defendants. On that basis, learned Trial Court struck off the right of the petitioners/defendants to file written statement.

2. Mr. O.P. Aggarwal, learned counsel appearing on behalf of the respondent submits that the delay which has occurred is of almost two years and learned Trial Court had taken the correct decision by rejecting the request of the petitioners/defendants seeking permission to file written statement after inordinate delay.

3. This Court is of the considered view that the issue raised herein is no more *res-integra* in view of the fact that the Hon'ble Supreme Court in authoritative pronouncements in the cases of *Salem Advocates Bar Association vs. Union of India* reported in **2003 (1) SCC 49**, *Kailash vs. Nankhu* reported in **(2005) 4 SCC 480** and *Bharat Kalra vs. Raj Kishan Chabra* reported in **2022 SCC OnLine SC 613** has time and again directed that in ordinary civil suits the merits of the case are to be considered and technicalities need not come in the way of the parties and has further held that in cases where written statements are delayed for non-filing on time and the other side can be compensated with costs.

4. The aforesaid judgments have been recently followed by learned Division Bench of this Court on 15.02.2023 in FAO(OS)149/2022 titled *Jamaludddin vs. Nawabuddin and Ors.*

5. In view of the aforesaid ratio laid down by the Hon'ble Supreme Court as well as Division Bench of this Court, the instant petition is allowed.

6. Petitioners are granted 10 days' time to file their written statement.

7. The learned Trial Court is directed to take such written statement on record and proceed in accordance with law. The permission to file the written statement is however, subject to cost of Rs.25,000/- to be

paid by petitioners/defendants to respondent/plaintiff on or before 21.02.2023.

8. Default or infraction in the timeline as directed above will automatically entail in the permission so granted today redundant, and shall not be given effect.

9. With the aforesaid directions, the petition stands disposed of.

10. Pending application, if any, also stands disposed of.

11. Copy of order be given *dasti* under signatures of Court Master.

FEBRUARY 17, 2023

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TUSHAR RAO GEDELA, J

