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

Date of decision: 30.10.2023

+ **CM(M) 105/2023 & CM APPL. 3425/2023**

ARSHAD

..... Petitioner

Through: Mr. Rajuddin Khan, Advocate.

versus

SH ISRAR AHMED @ THAKUR

..... Respondent

Through: Mr. Abid Ibrahim, Advocate.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 15.10.2022 passed by the Trial Court in CS SCJ No. 251/2022, titled "**Israr Ahmed @ Thakur vs. Arshad**", whereby the Trial Court declined to take the written statement of the Petitioner on record as it was filed beyond the prescribed period of 30 days and consequently, struck off the defence of the Petitioner.
2. The Petitioner herein is the defendant and the Respondent is the plaintiff, who has filed the civil suit against the Petitioner for recovery of Rs. 1,94,000/-.
3. Learned counsel for the Petitioner states that the written statement along with the documents relied upon was filed on 15.10.2022. He states that this is an ordinary civil suit and the Trial Court had jurisdiction to



enlarge the time for filing the written statement under Order VIII Rule 1 of CPC. He relies upon the judgments of the Supreme Court in ***Kailash v. Nankhu, (2005) 4 SCC 480.s***

3.1. He states that he is willing to compensate the Respondent with legal costs for the delay. He states that the Petitioner has material defense to oppose the claim raised in the civil suit.

4. In reply, learned counsel for the Respondent states that no cogent reason has been set up in the petition for condoning the delay of 120 days in filing the written statement.

4.1. He states that however, with a view to expedite the trial, he has no objection, if the Petitioner's written statement is allowed to be taken on record, subject to costs.

5. This Court has considered the submissions of the parties and perused the record.

6. The learned Single Judge of this Court in ***Randhir Singh v. Urvashi Suri*** decided in ***CM(M) 717/2023 dated 04.05.2023*** after taking note of the judgments of the Supreme Court and this Court, while considering the issue of closing the right of the defendant to file written statement in an ordinary civil suit, held that the effort of the Court is always that disputes should ordinarily be decided on merits. The relevant portion of the said judgment reads as under:

“10. It is beyond cavil that the Supreme Court and the High Court by a catena of judgments have held in deserving cases that the delay in filing the written statement can be condoned, however, subject to a compensatory cost.

11. The Supreme Court in the judgments of Bharat Kalra v. Raj Kishan Chabra reported as 2022 SCC OnLine SC 613, Salem Advocate Bar Association, T.N v. Union of India, reported as (2005) 6 SCC 344, Kailash v. Nanhku, reported as (2005) 4 SCC 480 has held that the disputes



ordinarily ought to be resolved on merits rather than on technicalities and, therefore, in situations where the trial has not reached advanced stages, it could be possible for the courts to condone the delay so as to ensure that the pleadings are complete and the disputes are resolved on merits.

12. Learned Division Bench of this Court in Jamaluddin v. Nawabuddin Neutral Citation Number - 2023/DHC/001211, has also considered the similar issues which were raised and condoned the delay, subject to compensatory costs.

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14. The petitioner himself is aged about 69 years and this Court cannot overlook the fact that the age coupled with the past medical history of the petitioner/defendant, could have possibly, been the reason for the delay in filing the written statement.”

(Emphasis supplied)

7. Therefore, in view of the aforesaid judgement and the fact that this is a non-commercial suit and the Petitioner has filed his written statement within 120 days of service of summons, this Court deems it appropriate to enlarge the time for filing the written statement.

8. Accordingly, with the consent of the parties, the impugned order dated 15.10.2022 is set-aside on the following grounds:

- (a) The Petitioner will pay costs of Rs.10,000/- to the Respondent within a period of two (2) weeks.
- (b) The Petitioner will file his affidavit of admission/denial of the documents filed with the plaint within a period of two (2) weeks.
- (c) Subject to the receipt of the costs of Rs. 10,000/- and service of affidavit of admission/denial of documents within two (2) weeks, the Respondent will file his replication and affidavit of admission/denial of documents filed by the Petitioner within four weeks (4) thereafter.
- (d) The Petitioner shall remain duly represented before the Trial Court on each date of hearing and not seek any unnecessary adjournment.



9. It is clarified that, in case, the Petitioner fails to comply with the aforesaid directions of payment of costs and/or filing of affidavit of admission/denial of documents within the time granted by this Court, the liberty granted *vide* this order shall automatically stand forfeited and no further extension will be granted. Consequently, the defense of the defendant shall be struck off.

10. With the aforesaid directions, the present petition is disposed of along with pending applications, if any.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 30, 2023/kct/aa

Click here to check corrigendum, if any