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

Date of decision: 30.10.2023

+ **CM(M) 118/2023 & CM APPL. 3801/2023**

SANDEEP PATIL

..... Petitioner

Through: Mr. Dhananjay Sehrawat, Mr. Yashpal Singh and Mr. Arya Shekhar, Advocates.

versus

**MST.ARIFA FAROOQ @ ARIFA HAROON
AND ANR**

..... Respondents

Through: Mr. S.S. Nizami, Advocate (through VC).

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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 24.12.2022 passed by the ADJ-10, Central District, Tis Hazari Courts, Delhi ('Trial Court') in civil suit no. 910/2022, titled as '**Arifa Farooq @ Arifa Harron v. Mehtabuddin and Ors.**', whereby the Trial Court, inter alia, closed the right of the Petitioner to file his written statement.
2. The Petitioner is defendant no. 2 and the Respondent No. 1 is the plaintiff in the said civil suit filed for specific performance of agreement and permanent injunction with respect to Flat on the fourth floor right Side, Gali Zameer Wali, Nawab Ganj, Azad Market, Delhi – 110006.



- 2.1. Learned counsel for the Petitioner states that only 54 days had passed from the issuance of summons of the suit on 01.11.2022. He states that thus, the Petitioner was well within the limitation period and the Trial Court could've extended the time to file the written statement. He states that the petitioner had on 24.12.2022 requested for extension of time to file the written statement, however, the Trial Court closed his right to file written statement.
- 2.2. He states that he is willing to compensate the Respondent No.1 with legal costs for the delay in filing the written statement.
- 2.3. He states that the written statement has been drawn and duly signed and he states that a copy of the said written statement will be handed over to the Respondent No. 1 on or before 31.10.2023.
3. In reply, learned counsel for Respondent No. 1 states that with a view to expedite the suit proceedings, he has no objection to the Petitioner being granted a final opportunity to file his written statement, subject to Petitioner being put to strict terms.
4. This Court has considered the submission of the parties and perused the record.
5. 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 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

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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)

6. Accordingly, with the consent of parties, the impugned order dated 24.12.2022 to the effect that it closed the right of the petitioner to file written statement is modified on the following terms;

- (a) The Petitioner will serve the copy of the duly signed and affirmed written statement on the Respondent No.1, within one (1) week.
- (b) He will file an affidavit of admission/denial of the documents within one (1) week with the advance service to the Respondent No. 1.
- (c) He shall pay a cost of Rs. 25,000/- to the Respondent No. 1 within one (1) week.
- (d) He will not seek any unnecessary adjournments before the Trial Court and will be available and duly represented by a counsel before the Trial Court on each date of hearing.

7. Subject to receipt of the costs, written statement and affidavit of admission/denial of documents within the time granted hereinabove, the Respondent No. 1 will file replication within four (4) weeks thereafter along with affidavit of admission/denial of documents.

8. It is made clear that if the Petitioner commits any faults in filing his
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pleadings, documents and payment of costs within the time granted hereinabove, the opportunity granted vide this order shall automatically stand revoked and the order dated 24.12.2022 shall come into effect.

9. With the aforesaid directions, the present petition is disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

OCTOBER 30, 2023/ mohini/aa