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

Date of decision: 17.11.2023

+ **CM(M) 155/2023 & CM APPL. 4692/2023**

DEEPAK KUMAR ARORA Petitioner

Through: Mr. Sanchit Garga, Advocate.

versus

SURENDRA KUMAR SINCE DEAD THROUGH LRS & ORS.

..... Respondents

Through: Mr. Sudhir Gupta, Advocate.

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 the Constitution of India impugns the orders dated 22.01.2020 and 16.12.2022 passed by ASCJ, Karkardooma, Shahdara, Delhi ('Trial Court') in CS No. 352/2019, titled as **Surender Kumar v. Deepak Kumar Arora**, declining to take the written statement of the Petitioner i.e., defendant on record in view of the fact that the written statement was filed 100 days beyond the initial statutory period of 120 days.

1.1. The Petitioner is the defendant and the Respondent is the plaintiff before the Trial Court. The Respondent has filed the suit for possession, injunction and mesne profits bearing CS No. 352/2019 on 19.03.2019.

2. The learned counsel for the Petitioner states that the civil suit has been



filed by the Respondents for possession of the suit property on the basis of title, which is disputed by the Petitioner herein. He states that the Petitioner herein has a substantial defence to the said claim and it would be in the interest of justice that the claims in the suit are decided on merits.

2.1 He states that he remains ready and willing to pay the legal costs to the Respondents to compensate for the delay in filing the written statement.

3. In reply, learned counsel for the Respondents state that the petitioner herein has neither filed an application under Order VIII Rule 1 CPC seeking enlargement of time nor furnished any reasonable explanation for the delay in filing the written statement.

3.1 He states that the Respondents continue to suffer due to the delay in the adjudication of the suit.

3.2 He states without prejudice, if this Court is inclined to enlarge the time for filing the written statement, the Petitioner should be put to strict terms for his future participation in the trial and further direct the Petitioner to pay costs for the delay in filing the written statement.

4 This Court has considered the submissions of the parties and is of the opinion that in the facts of this case, there is no infirmity in the order of the Trial Court passed on 22.01.2020.

4.1. In this regard, it would be appropriate to refer to the case of ***Randhir Singh v. Urvashi Suri*** passed by the learned Single Judge of this Court 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, held that the effort of the Court is 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)

4.2. However, looking at the past conduct of the Petitioner, it is necessary that the Petitioner is put to strict terms with respect to his participation in the trial.

4.3. Accordingly, with the consent of the parties, the following directions are passed:

- (i) The Petitioner shall pay a cost of Rs. 95,000/- to the Respondents on or before 09.12.2023 before the Trial Court;
- (ii) The Petitioner will file his affidavit of admission denial of the documents filed with the plaint on or before 09.12.2023;
- (iii) The Petitioner will ensure that all the documents relied on in support of the written statement, stand filed before the Trial Court on or before 09.12.2023.



(iv) Subject to the Petitioner complying with each of the aforesaid conditions, the Respondents will be at liberty to file replication within four (4) weeks thereafter, along with additional documents, if any, and affidavit of admission denial of documents filed by the Petitioner herein.

5 It is directed that if there is any default by the Petitioner in complying with the aforesaid directions at (i) to (iii), the Trial Court's order dated 22.01.2020 shall come into operation.

6 Further, the Petitioner has undertaken before this Court that he will remain duly represented before the Trial Court through a counsel on each date of hearing and not seek any adjournment. He is bound to the said statement and the learned Trial Court is requested to exercise its jurisdiction under Order XVII CPC, in case it is of the opinion that the petitioner is seeking unnecessary adjournments.

7 The learned counsel for the petitioner undertakes to comply with the aforesaid directions at (i) to (iii) within time granted herein above.

8 The present petition is disposed of with the aforesaid directions. Pending application also stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

NOVEMBER 17, 2023

Pa/sk

Click here to check corrigendum, if any