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

Date of decision: 18.12.2023

+ CM(M) 184/2023, CM APPLs. 5810-11/2023

MASROOR KHAN

..... Petitioner

Through: Mr. Gaurav Bhatt, Advocate

versus

MOHSINA KHATUN

..... Respondent

Through: Mr. Kumar Vikram, 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):

CM(M) 184/2023 & CM APPL. 5810/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 02.01.2023 passed by the SCJ – cum – RC, East District, Karkardooma Courts, Delhi ('Trial Court') in Civil Suit No. 208/2022, titled as '**Mohsina Khatun v. Masroor Khan**', whereby the Trial Court has dismissed the Petitioner i.e., the defendant's, application filed under Order VIII Rule 1 of Code of Civil Procedure, 1908 ('CPC') seeking condonation of delay in filing written statement and consequently, struck off the Petitioner's written statement from its record.

2. The Petitioner is the defendant and Respondent is the plaintiff in the civil suit. The said suit has been filed seeking recovery of possession,



permanent injunction, arrears of rent and mesne profits with respect to property bearing no. 35/5/2, Ground Floor, Aram Park, Shastri Nagar, Delhi – 110031 ('suit property').

Submissions of counsel for parties

3. Learned counsel for the Petitioner i.e., the defendant, states that the Petitioner was unable to file the written statement within the limitation period of 120 days on account of his medical ailments.

3.1. He states that the written statement was duly accompanied with application filed under Order VIII Rule 1 CPC seeking condonation of delay. And, therefore, he states that the delay of 127 days beyond the statutory period of 30 days should be condoned as held by the Supreme Court in ***Kailash v. Nanhku, (2005) 4 SCC 480.***

4. In reply, learned counsel for Respondent i.e., the plaintiff, states that no sufficient cause has been shown by the Petitioner for seeking condonation of delay in filing the written statement. He states that the defendant wilfully failed to file the written statement after service of summons, to deny the payment of rent.

4.1. He states that the relationship between the Respondent and the Petitioner is that of a landlord and tenant respectively. He states that the Petitioner has wilfully failed to pay the rent with effect from January, 2021, however, he continues to enjoy the possession of the suit property. He states as on date, the Petitioner is in arrear of rent for thirty-six (36) months starting from January, 2021.

Findings and analysis

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



6. The following facts are admitted between the parties:

6.1. The Petitioner was duly served with the summons and paper-book on 31.03.2022.

6.2. The Petitioner failed to file his written statement within the statutory period of 30 days and therefore, the Trial Court vide order dated 09.05.2022 struck off the defence of Petitioner.

6.3. The Petitioner thereafter, belatedly on 07.09.2022 filed his written statement along with an application under Order VIII Rule 1 CPC, for condonation of delay in filing the written statement and recalling the order dated 09.05.2022.

7. The Petitioner in the application filed under Order VIII Rule 1 CPC has urged that he was unable to file his written statement on account of injuries sustained on a fall in April, 2022. In support of the said submission, the Petitioner has filed a certificate issued by one Dr. H.R. Khan, B.U.M.S., on 05.09.2022. The relevant portion of the application under Order VIII Rule 1 CPC and the certificate dated 05.09.2022 reads as under:

Application under Order VIII Rule 1 CPC

“4. That the defendant could not filed his written statement before this Hon'ble Court within stipulated period as in the month of April, 2022, the applicant/defendant fell down, due to which he sustained injuries on his backbone and due to said incident, the concerned doctors advised him for bed rest. However, due to his bad condition, the applicant/defendant remained on bed rest from 25.04.2022 to 25.08.2022.”

(Emphasis Supplied)

Certificate dated 05.09.2022

“To whom it may concern”

This is to certify that pt Mr. Masroor khan 60/ male R/o Arampark Shastrinagar Delhi-31 was sick c/o Severe Backache c Diabetic Mellitus c G. weakness he was under my treatment since 25/04/22 to 25/08/22 he was advise to take complete bed rest [sic] now today I carefully examine



and declare fit for his daily routine duty.

Thanking You

Dr. H. R. KHAN

B.U.M.S.

Reg. No. DBCP/OU/4808

13, West Laxmi Market, Delhi-110051”

(Emphasis Supplied)

7.1. Upon a perusal of the aforesaid extract of the pleading and the certificate, it is evident that the certificate dated 05.09.2022 does not make any reference to any ‘injury’ suffered by the Petitioner on account of a fall (accident). A perusal of the certificate shows that the Petitioner was advised bed rest on account of sickness and medical ailments and not any ‘injury’. Therefore, the finding of the Trial Court that the medical evidence does not corroborate the reason set out in the application, is duly borne out.

8. The Petitioner has relied upon the judgment of Supreme Court in ***Kailash v. Nanhku*** (supra), to state the delay of 127 days after the initial 30 days period, ought to have been condoned. However, the Supreme Court in the said judgment itself has also held that if the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel, the defendant cannot be permitted to seek extension of time in filing the written statement.

9. In the facts of this case, this Court finds that the Petitioner has deliberately not participated in the suit proceedings. Thus, in the opinion of this Court, there’s no infirmity in the findings of the Trial Court that Petitioner has deliberately not filed the written statement.

10. However, to examine the bona fides of the Petitioner, during the course of hearing, the Petitioner herein was called upon to pay the admitted



outstanding rent to the Respondent for the period January, 2021 to December, 2023. However, the learned counsel for the Petitioner stated on instructions that the Petitioner is unwilling to pay the rent for occupation of the suit property; and has instead relied upon the defence that the Petitioner has become the owner of the suit property by way of the purported unregistered documents dated 21.05.1997 executed in his favour by the deceased husband of the Respondent herein. The Respondent has contended that the said unregistered documents are forged and have never seen the light of day till date.

The Petitioner was called upon to explain if he has the custody of the title documents standing in favour of Mr. Latif Ali i.e., the husband of the Respondent. The Petitioner admits that he does not have the custody of the said documents. The absence of the custody is a material fact against the Petitioner.

11. In contrast, the Respondent has produced for inspection before this Court, the original documents pertaining to the suit property standing in the name of Mr. Latif Ali, through which the Respondent claims possessory rights. In these documents, the Will dated 07.12.1993 is registered. The Respondent has also relied upon the original rent agreement executed between the parties herein. Further, the electricity meter in the suit property stands in the name of the Respondent till date evidencing that the Petitioner's claim of possession in pursuance to possessory rights since the year 1997 is prima facie incorrect.

12. In these circumstances, this Court is not inclined to permit the Petitioner's written statement to be taken on record as it is evident that he is seeking to protract the trial so as to not pay the rent.



13. However, in view of the judgment in *Kailash v. Nanhku* (supra), this Court is of the opinion that the disputes inter se parties should ordinarily be decided on merits.

14. Accordingly, subject to strict compliance of the terms set out hereinafter, the learned Trial Court is directed to take the Petitioner's written statement on record:

(i) The Petitioner shall deposit before the Trial Court, the arrears of rent from January, 2021 to December, 2023 at Rs. 6,000/- per month (Rs. 6,000 X 36 months = Rs. 2,16,000/-) within four (4) weeks.

(ii) The Petitioner will file an affidavit before the Trial Court within four (4) weeks undertaking to continue to deposit the rent before the said Court during the pendency of the suit.

(iii) The release of the aforesaid payments will be as per the further directions to be issued by Trial Court.

14.1. However, in case the Petitioner fails to comply with the terms set out at paragraph nos. 18 (i) and (ii), the order dated 09.05.2022 and 02.01.2023 shall continue to operate between the parties.

15. With the aforesaid directions, this petition is disposed of. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 18, 2023/msh/aa

[Click here to check corrigendum, if any](#)