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

% Judgment delivered on: 17.03.2023

+ CM(M) 209/2023, CM APPL. 6279/2023 & CM APPL. 6280/2023

DEVINDER SINGH

..... Petitioner

versus

YUDHVIR SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Medhanshu Tripathi, Advocate
with Mr. O.P. Gaud, Advocate.

For the Respondent : Ms. Ashu Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 05.12.2022 in CS DJ 756/19, titled as “Yudhvir Singh vs. Virender Singh”, whereby the application under Section 114 CPC r/w Order 47 Rule 1 CPC 1908, seeking setting aside of the order dated 23.07.2022 closing the opportunity of the petitioner/ defendant to file his written statement, was dismissed.

2. Mr. Medhanshu Tripathi, learned counsel appearing for the petitioner submits that by way of an application under Order VI Rule 17 filed by the respondent/ plaintiff, the amendment to the plaint was

allowed on 22.02.2022.

3. Learned counsel submits that it was for the first time that subsequent to the allowing of the application under Order VI Rule 17 CPC, 1908, the petitioner was impleaded as a necessary party as defendant No.2.

4. It was in pursuance to that order, that the copy of the amended plaint was directed to be supplied to the petitioner.

5. Mr. Tripathi, learned counsel submits that the copy of the plaint along with the documents were supplied on 04.03.2022 to the previous counsel, since the counsel had not appeared and was negligent, the petitioner/ defendant did not come to know about the said service of the copies of the amended plaint and the documents attached thereto.

6. On realizing that the learned Trial Court has closed the opportunity to file the written statement on 27.07.2022, the petitioner/ defendant No.2 filed his application under Order 47 Rule 1 of the CPC, 1908 before the Court on 14.08.2022.

7. Mr. Tripathi, learned counsel further submits that it was for the first time on 16.09.2022 that the petitioner/ defendant No. 2 was supplied with the copies of the plaint as also the documents annexed thereto.

8. Mr. Tripathi, learned counsel submits that since the application under Order 47 was decided only on 05.12.2022, there was no occasion for the petitioner/ defendant No.1 to file the written statement in the interregnum.

9. Learned counsel submits that the impugned order did not consider any of the aforesaid facts, and has ignored the fact that the present suit is

one under the ordinary civil jurisdiction, whereby the Courts have treated the delay beyond the stipulated period leniently and have permitted litigants to file their written statement.

10. *Per contra*, Ms. Ashu Arora, learned counsel appearing for the respondent/ plaintiff submits that in pursuance of the learned Trial Court's order, the copy of the amendment plaint along with the documents appended thereto were supplied to the petitioner's counsel on 04.03.2022.

11. Ms. Arora, learned counsel submits that there is no explanation coming forth from the petitioner/ defendant No.2 as to what prohibited the petitioner from filing his written statement from 04.03.2022 till 27.07.2022.

12. Ms. Arora, learned counsel also submits that even if one were to disregard the earlier supply of copies of the amended plaint on 04.03.2022, for abundant precaution, the fresh copies of the same were supplied yet again on 16.09.2022.

13. Ms. Arora, learned counsel submits that there is no reason whatsoever at all to explain the enormous delay occurring even subsequent to 16.09.2022. On that basis, Ms. Arora, learned counsel prays that the petition be dismissed with exemplary costs.

14. This Court has considered the rival contentions of the parties, as also considered the documents placed on record and the impugned order.

15. The learned Trial Court appears to have overlooked the fact that it was only *vide* the order dated 22.02.2022, and that too after the application under Order VI Rule 17 of the CPC, 1908 was allowed, for

the first time the petitioner was impleaded as a necessary party and arrayed as defendant No.2.

16. The learned Trial Court has also perfunctorily overlooked the submissions made by the petitioner that the previous counsel stated to have been engaged by the petitioner/ defendant No.2 had not filed his *vakalatnama* and has left for the United States without even informing the petitioner, was noted without any observation made thereon.

17. Learned Trial Court has primarily dealt with the provisions of Order 47 Rule 1 and as to how it is or is not applicable to a particular case and not the merits of what the review application was all about.

18. The learned Trial Court did not even consider the judgment of the Supreme Court in in Suo Moto Writ Petition (C) No. 3/2020 “IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION” as well as *Prakash Corporates vs. Dee Vee Projects Limited* reported in (2022) 5 SCC 112, to give benefit of exemption from limitation, which has been extended to the litigants, in general, all over the country in the wake of COVID-19 pandemic, and has passed an order without considering any of the issues settled by the Supreme Court.

19. So far as the submission of Ms. Arora that despite service of plaint along with the documents on 16.09.2022 no written statement was filed is concerned, the same is recorded to be rejected. This is for the reason that till such time the order dated 23.07.2022 was holding the fort, and was not set aside or modified in accordance with law, there was no opportunity or any occasion for the defendants to have filed its written statement. It was only on the basis of passing of the impugned order that the petitioner/ defendant could and did approach this Court

challenging the same.

20. It is well-settled by the Supreme Court in series of judgments commencing from the judgment in *Salem Advocates Bar Association vs UOI* reported in 2003 (1) SCC 49, *Kailash vs. Nankhu* reported in (2005) 4 SCC 480 through till *Bharat Kalra vs. Raj Kishan Chabra* reported in 2022 SCC OnLine SC 613, that the stipulation of 120 days period in ordinary cases, shall not be taken as mandatory and wherever necessary and found fit, the courts would exercise its discretion to permit the defendants to file their written statements.

21. Another relevant aspect which was considered by the courts was that ordinarily the suits must be decided on merits rather than on technicalities.

22. A Division Bench of this Court in *Jamaluddin vs. Nawabuddin & Ors.* Neutral Citation Number - 2023/DHC/001211, also re-iterated the same principles.

23. This Court is bound by the aforesaid judicial precedents.

24. In *Jamaluddin (supra)*, learned Division Bench of this Court had held that the delay in suitable cases can be condoned, however, compensatory costs to the other party normally ought to be passed therein, so as to ensure equity between the parties.

25. In view of the aforesaid judgments, as also in the facts which obtained in the present case, this Court is of the considered opinion that the petition can be allowed and the impugned order can be set aside on the aforesaid ground.

26. Accordingly, the impugned order dated 05.12.2022 is set aside. The petitioner/ defendant No.2 is permitted to file his written statement

within one week from today and placed on record by the learned Trial Court.

27. Learned Trial Court is directed to proceed in accordance with law thereafter.

28. The aforesaid directions are subject to a payment of Rs. 25,000/- as costs to be paid by the petitioner/ defendant to the respondent/ plaintiff within one week from today against a valid receipt, which may be filed under a proper index before the learned Trial Court itself.

29. With the aforesaid directions, the present petition along with pending applications stand disposed of.

TUSHAR RAO GEDELA, J.

MARCH 17, 2023

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