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

% Judgment delivered on: 08.05.2023

+ CM(M) 251/2023 & CM APPL. 7660/2023

SH. ANIL KUMAR KUCHHAL & ANR. Petitioners

versus

SH. PRADYUMAN KUMAR AGGARWAL

& ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sunil Dalal, Sr. Adv. with Mr. Hitesh, Mr. Tushar, Ms. Manisha Beniwal, Mr. Mahabir Singh and Mr. N. Bhati, Adv.

For the Respondent : Mr. Ankit Jain and Mr. Aditya Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioners challenge the order dated 11.01.2023 passed by the First Appellate Court (RCT) in RCT No.04/2022 titled '*Sh. Anil Kumar Kuchhal & Anr. Vs. Sh. Pradyuman Kumar Aggarwal & Anr.*' whereby the first appeal against the order dated 20.11.2021 passed by the ARC whereby an application under Order VIII Rule 1 CPC, 1908 seeking condonation of delay in filing the written statement was dismissed.

2. Mr. Dalal, learned senior counsel appearing for the petitioners submits that in a long line of judgments of the Hon'ble Supreme Court, the right of the defendant to file the written statement even beyond the prescribed period of 30 days and extended period of 90 days had been condoned, though the same was subject to exemplary costs. Learned counsel also refers to the judgment in *Kailash vs. Nankhu* reported in (2005) 4 SCC 480, additionally by Division Bench of this Court in *Jamaluddin vs. Nawabuddin & Ors.* **Neutral Citation Number - 2023/DHC/001211**

3. In the present petition, Mr. Dalal, learned senior counsel appearing for the petitioners submits that the same counsel had been appearing for and on behalf of petitioner in respect of the litigation right from the time notices under Order 14 (1) (a) of the Delhi Rent Control Act, were issued by the respondent / plaintiff, continued to appear for the petitioner till the time the application under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement was dismissed.

4. Learned senior counsel also submits that the same counsel had also appeared and resisted the permission sought under the Slum Areas Act, 1956, which was allowed. Mr. Dalal submits that he has not only appeared before the competent authority under Slum Areas Act, but also filed an appeal there against.

5. On that basis Mr. Dalal, learned senior counsel submits that the trust between the petitioner upon his counsel was complete and absolute and there was no reason to doubt that the then counsel would not file the written statement within the stipulated period.

6. In respect of order dated 28.02.2020, whereby the learned ARC had closed the right of filing the written statement, learned senior counsel submits that a perusal of the said order does not show any explicit disentitlement from filing the written statement. According to Mr. Dalal, at worst, the period of 30 days was over which was noted in the order dated 28.02.2020, however, there was no disentitlement otherwise as per law as extended period of 90 days was still available.

7. Mr. Dalal submits that the petitioner challenged the order dated 20.11.2021 passed by the ARC dismissing the application under Order VIII Rule 1 CPC by way of the aforesaid appeal before the Rent Control Tribunal.

8. Mr. Dalal submits that along with the said appeal, documents pertaining to the complaint filed by the petitioner against the former counsel before the Bar Council of Delhi and other relatable documents were also filed, however, were not considered. Learned senior counsel submits that the non-consideration of the reasons of not having filed the written statement in time was fatal to the case of the petitioner. Moreover, learned senior counsel submits that the First Appellate Court in a perfunctory manner had dismissed the submission that it was due to the negligence of the counsel that the written statement was not filed in time.

9. Learned senior counsel submits that in the absence of consideration of those documents gross injustice has occurred and this Court ought to interfere in the impugned order.

10. Learned senior counsel also relies upon the judgment of the Hon'ble Supreme Court in '*Rafiq and Another Vs. Munshi Lal and*

Another' (1981) 2 SCC 788 as also the judgment of '*Smt. Lachi Tewari & Ors. Vs. Director of Land Records & Ors.*' reported in 1984 (Supp) SCC 431 to submit that the negligence of the counsel ought not to disentitle the parties of the merits of the case, which have to be considered independently by such negligence by the civil courts.

11. On that basis, Mr. Dalal submits that even after taking everything against the petitioner, purely on the basis of the aforesaid judgments of the Supreme Court, the petitioner can be granted one opportunity to file the written statement.

12. *Per contra*, Mr. Jain, learned counsel appearing for the respondent vehemently opposes the submissions made by the learned senior counsel and submits that the petitioner never challenged the order dated 28.02.2020 by way of which the learned ARC had closed the right to file written statement.

13. Learned counsel submits that it is only the dismissal of the application under Order VIII Rule 1 CPC, 1908 by the learned ARC that was challenged. In other words, Mr. Jain submits that having not challenged the order dated 28.02.2020, there is no way legally, or otherwise, for the petitioner to seek any indulgence of this Court to obtain the permission to file its written statement.

14. Learned counsel also took this Court to the various paragraphs of the appeal, particularly to para 8 of the First Appeal as filed before the First Appellate Court, to submit that, apart from the single paragraph, there is no reference to the alleged negligence of the counsel in filing the written statement.

15. Learned counsel also brought the attention of this Court to the

application under Order VIII Rule 1 CPC filed by the petitioner to submit that it is completely bereft of even a reference to any negligence of the counsel, ostensibly, since the said application was filed by the very same counsel who is alleged to have been negligent.

16. Mr. Jain, learned counsel on the aforesaid basis submits that the present petition, ex facie, it is would not be maintainable and any reference to documents filed along with the appeal and not having been considered also cannot be questioned before this Court inasmuch as, apparently, those documents were never brought before the First Appellate Court in accordance with law and thus, learned counsel submits that the present petition should be dismissed with exemplary costs.

17. This Court has considered the rival submissions as also perused the impugned order as well as other documents placed on record.

18. It is a matter of fact that the documents pertaining to the complaint filed before the Bar Council of Delhi and other related documents were indeed filed before the First Appellate Court, though apparently not filed along with any application seeking permission to place such documents on record.

19. A perusal of the complaint filed against the then counsel, though may not be relevant for these proceedings to ascertain the truthfulness or veracity of the averments of the said complaint, however, do support the fact that the petitioner, in fact, did complain to the Bar Council of Delhi against the purported misconduct, un-professional behaviour and negligence of the then counsel.

20. The said issue does not appear to be taken note of by the First

Appellate Court in the right earnest. The party is entitled to take the grounds which are available to it before the First Appellate Court, particularly the documents which have been filed subsequent thereto and the learned First Appellate Court may have to consider those documents, even for the purpose of discarding them for their inadmissibility or otherwise. In the present case, though the First Appellate Court has appreciated the contentions of both parties in detail, however, has overlooked these documents.

21. In view of the aforesaid, it appears to this Court that an opportunity to the petitioner to re-urge and re-argue the appeal before the First Appellate Court ought to be afforded only for the reason of non consideration of such documents.

22. In view of the above, this Court is of the considered opinion that the matter requires remit and the learned First Appellate Court is directed to rehear the appeal, reserving all rights and contentions of both the parties.

23. The First Appellate Court also needs to consider two relevant aspects, that is, (i) whether the additional documents as filed by the petitioner can at all be taken on record and (ii) the admissibility as also the mode or proof or relevance of the same has to be considered at the first instance along with the appeal to appreciate the grounds raised in the appeal.

24. It goes without saying that the respondent will have all rights and liberty open to him to object to the same, both factually and in accordance with law.

25. In view of the aforesaid, the petition is disposed of with no order

as to costs.

26. The parties are directed to appear before the First Appellate Court on 22.05.2023.

27. The First Appellate Court is requested to fix the dates of hearing as convenient to it.

TUSHAR RAO GEDELA, J .

MAY 8, 2023/ms

