



\$~74

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

Date of decision: 30.10.2023

+ **CM(M) 402/2023 & CM APPL. 11917/2023**

JORA SINGH

..... Petitioner

Through: Mr. Rajesh Gupta and Mr. M.C. Verma, Advocates.

versus

RAM KARAN

..... Respondent

Through: Mr. Amardeep Indora, 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 impugns the order dated 26.11.2022 passed by the Additional District Judge – 04, North West, Rohini, Delhi in CS DJ 464/2021, titled as **Ram Karan v. Jora Singh** ('Trial Court') whereby the Trial Court declined to take the written statement of the Petitioner on record and thereby closed the right of the Petitioner to file the written statement.

1.1. The Petitioner is the sole defendant and Respondent is the original plaintiff in this Civil Suit.

1.2. The Civil Suit has been filed by the Respondent seeking a decree of partition of the property situated in Khasra no. 48/12 in the revenue estate of village Karala, Delhi ('suit property') and permanent injunction for restraining the defendant from raising unauthorised construction and creating third party interest in the suit property.



2. Learned counsel for the Petitioner states that the Petitioner has substantive defences to raise against the claim of partition as alleged by the Respondent including the non-rejoinder of necessary parties and non-inclusion of other properties which are liable for partition.

2.1. He states that the Petitioner is willing to compensate the Respondent with legal costs for the delay caused in the proceedings pending before the Trial Court qua delay in filing the written statement by him.

2.2. He further states that though the Petitioner has supplied an advance copy of the written statement to Respondent on 26.11.2022, however, the Petitioner seeks to amend his written statement by including the facts set out at Para 3.2.2 of this petition.

2.3. He states that, in the event if this court is pleased to allow the petition by taking the written statement on record, he therefore prays that he may be permitted to file a fresh written statement including the said fact set out at the Para 3.2.2 of this petition to avoid protraction of trial and filing of the subsequent application for amending of the written statement.

3. In reply, learned counsel for the Respondent states that the Petitioner has not offered any reasonable explanation for not filing the written statement within the time granted by the Trial Court on 04.08.2022, however, with a view to expedite the proceedings pending before the Trial Court, he has no objection if the Petitioner is permitted to file his amended written statement subject to Petitioner herein being imposed to strict terms.

4. This Court has considered the submissions of the parties and perused the record.

5. In the facts of the present case, the Petitioner has no doubt been negligent in conducting the suit proceedings and defaulted by not complying to file the written statement within the prescribed period.



6. It is also evident from the record that successive opportunities as well were given by the Trial Court to the Petitioner herein to file his written statement, yet the Petitioner has failed to avail the said opportunity or move any application with regards to extension of time or condonation of delay in filing the written statement despite being aware about the proceedings instituted against him.

7. In the opinion of this Court, the impugned order passed by the Trial Court does not suffer from any infirmity, however, taking into account the nature of reliefs sought by the plaintiff in the above stated civil suit, this Court is of the opinion that it would subserve the interest of justice if the defence of the Petitioner are considered and the claims in the suit are decided on merits. It will also preclude arguments of non-consideration of the defence of the Petitioner at subsequent stage and save multiplicity of proceedings.

8. 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 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 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.

xxx

xxx

xxx

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)

9. Accordingly, with the consent of the parties, the impugned order dated 26.11.2022 is set aside on the following terms:

(a) The Petitioner is directed to file his fresh written statement limited to including new facts set out in para 3.2.2 of this petition.

(b) The Petitioner will file the affidavit of admission-denial of documents of the plaintiff along with the written statement within a period one (1) week.

(c) The aforesaid opportunity is being granted to the Petitioner subject to the payment of legal costs of Rs. 25,000/- payable to the Respondent within a period of within a period of one (1) week.

(d) Subject to the Petitioner filing the fresh written statement accompanied with affidavit of admission-denial of the documents of plaintiff and payment of legal cost, the Respondent thereafter will file his replication within four (4) weeks along with affidavit of admission-denial of documents filed by the defendant.

(e) The Petitioner has given an undertaking before this Court that he will not seek any adjournment before the Trial Court and will be duly represented through a counsel on each date of hearing to co-operate in the expeditious disposal of the trial. The said undertaking is taken on record and he is bound down to the same, subject to the compliance of the payment of costs.

10. It is made clear that if the aforesaid conditions are not complied within the time granted by this Court, the liberty granted by this order with respect

CM(M) 402/2023



to Petitioner's right to file the written statement shall stand forfeited and the order dated 26.11.2022 shall become operational.

11. With the aforesaid directions, the present petition is allowed in the aforesaid terms.

12. Pending Applications, if any, shall stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

OCTOBER 30, 2023/Mohini/ms