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

% Judgment delivered on: 28.03.2023

+ CM(M) 234/2022

SHRI RAVI KANT

..... Petitioner

versus

SHRI RAMA KANT & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Charanjit Sharma, Advocate

For the Respondent : Mr. Raghav Sabharwal and Mr. Shivam Kaushik, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 12942/2022

1. This is an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. Application stands disposed of.

CM(M) 234/2022 & CM APP No. 12941/2022 (Stay)

4. The petitioner challenges the order dated 29.11.2021 passed in CS SCJ No. 695/2021 titled '*Ramakant vs. North Delhi Municipal Corporation and Others*', whereby the opportunity to file the written

statement on behalf of the petitioner/defendant no.1 was closed.

5. Learned counsel for the petitioner submits that the petitioner, in the present case, who was defendant no.1 before the learned Trial Court is an officer of the armed forces, in that, a personnel belonging to the Central Industrial Security Force and is posted to various parts of the Country on exigency of the services.

6. Learned counsel submits that the petitioner was served with the summons on 03.08.2021 when his counsel had entered the memorandum of appearance on his behalf. Learned counsel submits that being an armed forces' officer, it was not easy for the petitioner to furnish information to his counsel to file the written statement on time.

7. Learned counsel submits that deprivation from filing the written statement even before the 120 days' period as the stipulated under Order I Rule 10 of CPC, 1908 vide the impugned order dated 29.11.2021 was contrary to the well settled law of the Country as also was even prior to the expiry of the said stipulated extended period.

8. Learned counsel appearing for respondent no.2/MCD submits that they have no objection in case the petition is allowed and the petitioner is permitted to file his written statement.

9. There has no appearance on behalf of respondent no.1/plaintiff.

10. Learned counsel for the petitioner/defendant no.1 submits that no one had been appearing for respondent no.1 either before this Court or before the learned Trial Court for the past 2-3 hearings.

11. Be that as it may, the learned Trial Court ought to have considered the relevant aspect which are as under:-

(i) the period between March 2020 and through till 29.05.2022

was covered by the judgments of the Hon'ble Supreme Court in **Suo Moto Writ Petition (C) No.3/2020 'In Re: Cognizance for Extension of Limitation'** and '**Prakash Corporates vs. Dee Vee Projects Limited**' reported as **(2022) 5 SCC 112**.

- (ii) Secondly, the period of 120 days as stipulated has not gotten over as on the date of the impugned order and therefore without providing an opportunity to the petitioner to file the written statement, the order striking off the right to file the written statement was not correct.

12. The learned Trial Court also overlooked the settled law as laid down by the Hon'ble Supreme Court in catena of judgments in '**Salem Advocate Bar Association, T.N vs. Union of India**', reported in **(2005) 6 SCC 344**, '**Kailash vs. Nanhku and Ors**', reported in **(2005) 4 SCC 480** and '**Bharat Kalra vs. Raj Kishan Chabra**' reported as **2022 SCC Online SC 613**.

13. In accordance with the aforesaid law, there is no doubt that the time could have been extended even beyond the 120 days' period. Though, in the present case the time of 120 days' had not lapsed before the impugned order was passed.

14. Keeping in view the aforesaid, as also in view of the fact that the impugned order adversely affecting the right of the petitioner/defendant no.1, was passed during the COVID period as also during the period when the Hon'ble Supreme Court had specifically exempted the rigors of limitation on the completion of pleadings in respect of the parties all over the Country, petitioner can be provided one opportunity to file his

written statement.

15. In view of the above, impugned order insofar as it deprives the petitioner/defendant no.1 from filing his written statement is set-aside. The petitioner is permitted to file his written statement within four weeks from today.

16. The learned Trial Court shall take the written statement on record and proceed in accordance with law.

17. The petition alongwith application is disposed of with no order as to costs.

MARCH 28, 2023

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TUSHAR RAO GEDELA, J.

