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

% Judgment delivered on: 24.03. 2023

+ CM(M) 492/2023, CM APPL. 14731/2023 & CM APPL.
14732/2023

SUBHASH CHAND

..... Petitioner

versus

BALKISHAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pradeep Kumar, Advocate.

For the Respondent : None.

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 23.09.2022 titled as CS DJ 75565/16 titled as “*Balkishan vs. Subhash Chand*” whereby an application under Section 151 of the CPC, 1908, filed by the respondent/plaintiff seeking modification of orders dated 25.09.2017 and 12.03.2019, was sought and was allowed.

2. Learned counsel appearing for the petitioner/ defendant submits that though the right of the petitioner/ defendant to file his written statement was closed as far back as on 16.04.2015 and subsequently on 22.04.2016, however, by other orders passed by the learned Trial Court, the petitioner was permitted to file his written statement and the matter proceeded further.

3. Learned counsel submits that the trial is at a stage, where the respondent/ plaintiff's evidence was concluded and it was at the stage of the petitioner/ defendant to lead his evidence. It was at that stage, where it was noticed that by virtue of the order dated 16.04.2016, the right of the petitioner/ defendant to file his written statement was closed.

4. Learned counsel submits that once having been permitted to file his written statement and to have reached the stage of commencing the defendant's evidence, the said eventuality, ought not now be taken away, as a measure of indulgence, and the Trial Court ought to have permitted the petitioner/ defendant to lead his evidence.

5. This Court has considered the submissions made by the counsel for the petitioner as also perused the relevant orders placed on record.

6. It is clear from the impugned order dated 23.09.2022 that the right of the petitioner/ defendant to file the written statement on record was closed initially on 16.04.2015 which was subsequently reaffirmed by the learned Trial Court vide order dated 22.04.2016. It is also undeniable that no challenge to the said orders was laid by the petitioner/ defendant till the filing of the present petition.

7. It is also clear from the perusal of the record that the learned Trial Court erroneously permitted the petitioner/ defendant to file its written statement and the subsequent proceedings were conducted on the assumption that the filing of the written statement was a valid pleading filed on record by virtue of the orders passed by the learned Trial Court.

8. The submissions of the learned counsel that the present petition may be treated as a mercy petition and permit the defendant to carry out the defendant's evidence is not possible for the reason that the Court is

exercising its jurisdiction under Article 227 of the Constitution of India, which is circumscribed. In that, only the errors of jurisdiction or when the Subordinate Courts acted with material irregularity or judicial impropriety, are the ones which can be questioned and taken note of.

9. Though, learned counsel submits that the order dated 22.04.2016 has been challenged by way of the present petition, the same cannot be taken note of for the reason that there is no explanation at all as to why no steps were taken to challenge the same within reasonable time and as such the same is rejected on the grounds of inordinate delay and laches.

10. So far as the aspect of the learned Trial Court having taken the written statement on record and proceeded with it, is concerned, this Court in view of the fact that there was already an order against the defendant from taking the written statement on record, and thus, the subsequent errors in procedure cannot grant any undue benefit to the defendant *post facto*, specially, when the said order was, admittedly, never challenged except the way of the present petition.

11. In that view of the matter, this Court is of the considered opinion, that the impugned order dated 23.09.2022 is in accordance with law and there is no procedural irregularity or judicial impropriety with which, the learned Trial Court has acted.

12. In view thereof, the present petition along with pending applications is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 24, 2023/nd