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

Date of decision: 03.10.2023

+ CM(M) 605/2023 & CM APPL. 18360/2023

CHARAN JEET SINGH

..... Petitioner

Through: Mr. Vinod Sharma, Advocate
(through VC)

versus

PREETI DHAMIJA

..... Respondent

Through: Mr. G.B. Sewak and Mr. Devesh
Sharma, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 18359/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 605/2023

1. This petition impugns the order dated 16.03.2023 passed by Additional District Judge-02, Shahdara, Karkardooma Courts, Delhi in CS No. 76/2022 titled as **Preeti Dhamija v. Charam Jeet Singh** ('Trial Court') dismissing the application filed by the Petitioner under Order VIII Rule 1 Code of Civil Procedure, 1908 ('CPC') seeking condonation of delay in filing the written statement.

1.1 The Petitioner is the original defendant and the Respondent is the original plaintiff in the civil suit.



1.2 The civil suit has been filed for by the Respondent seeking a decree of possession, recovery of rent, damages, mandatory and permanent injunction against the Petitioner with respect to the property bearing No. A-29, Ground Floor, Surajmal Vihar, Delhi-110092 ('suit property')

2. The learned counsel for the Respondent states that it is a matter of record that the Petitioner herein was duly served with the summons on 26.03.2022. He states that however, the written statement was filed belatedly on 27.10.2022. He states that the explanation offered by the Petitioner herein for condonation of delay in filing the written statement shows that there was a deliberate intention to delay the proceedings before the Trial Court.

2.1 He states that the Petitioner herein was inducted as a tenant in the suit property by a registered lease deed.

2.2 He states that rent was reserved at Rs. 28,500/- per month and the Petitioner herein has been in wilful default of the payment of rent since May, 2021.

3. In reply, learned counsel for the Petitioner states that in addition to the written statement dated 27.10.2022, the Petitioner herein has also filed a counter claim bearing no. 166/2022 in CS No. 76/2022 for recovery of Rs. 25 lakhs paid as security to the Respondent.

3.1 He states that an opportunity to defend the suit be granted subject to payment of legal cost to compensate the Respondent for the delay caused in filing the written statement

4. In response, the learned counsel for the Respondent states that he has no objection if the written statement is taken on record subject to Petitioner herein being imposed to strict terms so as to ensure that there is no further



delay in the proceedings pending before the Trial Court; and upon payment of legal costs for the wilful delay.

5. The learned counsel for the Petitioner states that he has taken instructions from the Petitioner and is willing to pay cost of Rs. 1 lakh to the Respondent for the delay caused in the proceedings before the Trial Court.

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

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

7.1 It is also evident from the record that there were successive opportunities given to the Petitioner herein to file his written statement, yet the Petitioner has failed to avail the said opportunities or move any application seeking extension of time to file the written statement despite being aware about the proceedings instituted against him.

7.2 However, perusal of the record also shows that the Respondent herein has filed two applications under Order XII Rule 6 CPC and Order XXXIX Rule 10 CPC relying upon the admissions made by the Petitioner in the said written statement and therefore, the Respondent itself has also relied upon the written statement for the reliefs sought in the said civil suit. The Trial Court would therefore have to necessarily refer to the written statement to adjudicate the said applications.

8. 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 especially the applications, 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.

8.1 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.

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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. With the consent of the parties, the impugned order dated 16.03.2023 is set aside on following terms:



9.1 The aforesaid opportunity is being granted to the Petitioner subject to the payment of legal costs of Rs. 1 lakh payable to the Respondent within a period of within a period of two (2) weeks.

9.2 Subject to the costs being paid, written statement will be taken on record.

9.3 The Respondent shall file replication within two (2) weeks after receiving the costs.

9.4 The Petitioner will not seek any unnecessary 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 Trial Court is requested to exercise its jurisdiction under Order XVII of CPC in case, it is of the opinion that the Petitioner is seeking to delay the proceedings.

9.5 It is made clear that if there is any default in making the payment of legal costs of Rs. 1 lakhs and in terms as directed above, the liberty granted by this Court shall stand revoked and no further opportunity will be granted to the Petitioner. In such a case the order dated 16.03.2023 shall stand restored. However, even then the learned Trial Court will be at liberty to refer to the admissions made in the written statement for deciding the applications filed by the Respondent under Order XII Rule 6 CPC and Order XXXIX Rule 10 CPC.

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

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

MANMEET PRITAM SINGH ARORA, J

OCTOBER 3, 2023/rk/ms