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

% Judgment delivered on: 04.05.2023

+ CM(M) 717/2023 & CM APPL. 22380/2023

RANDHIR SINGH

..... Petitioner

versus

URVASHI SURI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Surender, Advocate.

For the Respondent : Mr. Kartickay Mathur and Mr. Shanker Kashyap, Advocates.

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 18.08.2022 in CS DJ 380/20 titled as "*Urvashi Suri vs. Randhir Singh*" whereby the learned Trial Court had closed the right of the defendant to file his written statement on the ground that despite repeated opportunities having been provided, the defendant did not avail of the same and has delayed such filing and hence, no indulgence ought to have been shown on him.
2. Mr. Surender, learned counsel appearing for the petitioner/ defendant submits that the petitioner/ defendant is a wheelchair bound

person and has multiple medical issues. In support thereto, the medical history of the petitioner/ defendant showing him to be a person who is suffering from multiple orthopedic ailments, are filed on the record of this Court.

3. Learned counsel submits that it was because this reason that despite having appeared a number of times and despite having engaged the counsel from the Legal Aid Cell at the District Courts, the written statement could not be filed in time. Learned counsel also submits that the counsel also did not co-operate, leading to the written statement not being filed and culminating in the impugned order.

4. Learned counsel submits that since the matter pertains to ordinary civil suit, it is trite that in such cases and in deserving situations, the Court can exercise its jurisdiction to condone the delay even beyond the stipulated period of time.

5. *Per contra*, learned counsel appearing for the respondent/ plaintiff submits that the respondent/ plaintiff is a 74 years old lady and has not been paid the rent of the subject suit premise from the last almost four years and has been suffering on that account.

6. Learned counsel further submits that the orders sheets reflect that the petitioner/ defendant has not acted within time and has been absolutely negligent, and that the impugned order was passed after considering the submissions made by the learned counsel for the petitioner/ defendant.

7. Learned counsel submits that the impugned order itself reflects that despite not having filed the written statement, only the right to file the written statement was closed and the defence was not struck off.

8. Learned counsel also submits that the impugned order is sustainable in law and does not call for any interference by this Court under Article 227 of the Constitution of India.

9. This Court has considered the rival submissions as also perused the impugned order as also the other orders placed on record.

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 costs.

11. The Supreme Court in the judgments of ***Bharat Kalra vs. Raj Kishan Chabra*** reported as 2022 SCC Online SC 613, ***Salem Advocate Bar Association, T.N vs. Union of India***, reported as (2005) 6 SCC 344, ***Kailash vs. Nanhku and Ors***, 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 vs. Nawabuddin & Ors.*** Neutral Citation Number - 2023/DHC/001211, has also considered the similar issues which were raised and condoned the delay, subject to compensatory costs.

13. This Court has also considered the medical reports of the petitioner/ defendant, which appeared to have missed the attention and consideration of the learned Trial Court and it appears that the petitioner indeed is a wheelchair bound person and has multiple orthopedic issues

which appear to limiting the movements of the petitioner.

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.

15. The learned Trial Court has overlooked documents pertaining to the medical condition of the petitioner/ defendant and without considering the same, has passed the impugned order.

16. This Court is of the considered opinion that the impugned order as such is unsustainable in law and is set aside.

17. The petitioner/ defendant shall file his written statement within two weeks from today, failing which, no further opportunity will be provided by the learned Trial Court at all.

18. The learned Trial Court is directed to take the written statement, if filed, within the time, on record and proceed in accordance with law.

19. The aforesaid indulgence is granted subject to a compensatory cost of Rs. 40,000/- to be paid by the petitioner/ defendant to the respondent/ plaintiff within two weeks from today against a valid receipt. Copy of the receipt shall be filed under a proper index before the learned Trial Court.

20. In view of the aforesaid, the petition along with pending application is disposed of.

21. The Trial Court shall endeavour to expeditiously dispose of the suit.

TUSHAR RAO GEDELA, J.

MAY 04, 2023/nd