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

Date of decision: 29.08.2023

+ CM(M) 775/2023 & CM APPL. 24188/2023

ABHISHEK GROVER

..... Petitioner

Through: Mr. Rohit Kishan Naagpal and
Mr. Dipanshu Gaba, Advocates.

versus

PUSHPA GROVER

..... Respondent

Through: Mr. Parikshit Mahipal, Advocate.

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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):

1. This petition filed under Article 227 of Constitution of India impugns order dated 04.02.2023, passed by the ADJ-09, Central District, Tis Hazari Courts, Delhi ('Trial Court') in civil suit no. 1015/2021, *inter alia*, dismissing the application filed by the Petitioner under Order VIII rule 1 of Code of Civil Procedure ('CPC').

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

1.2. The civil suit has been filed by the Respondent against the Petitioner for mandatory injunction qua property No. T-551, shop/godown no. 14, first floor, Prakash Market, Nabi Karim, Paharganj, New Delhi – 110055 ('suit property') and mesne profits of Rs.1 lakh per month.

1.3. The Petitioner herein is admittedly in possession of the subject property, which is a commercial premises.



2. The summons in the suit were duly served and the complete paper book was supplied to the Petitioner, on 28.05.2022. Therefore, the statutory period for filing the written statement is reckoned from 28.05.2022. However, since the Petitioner failed to file the written statement, his right to file written statement was closed on 26.09.2022.

2.1. The Petitioner thereafter, *inter alia*, filed an application under Order VIII Rule 10 of CPC on 29.11.2022 seeking extension of time by 180 days to file the written statement.

2.2. The said application under Order VIII Rule 10 of CPC has been dismissed by the Trial Court *vide* impugned order dated 04.02.2023. The operative part of the impugned order of the Trial Court reads as under:

“Another application u/o 8 rule 10 CPC dated 29.11.2022 moved on behalf of defendant seeking permission to file written statement with condonation of delay of 180 days.

In this case, on 28.05.2022, counsel for the. defendant appeared and sought complete paper book. Complete paper book was supplied in PDF format and it was observed that limitation to file pleadings started from 28.05.2022. No written statement was filed and on 26.09.2022 right of defendant to file written statement was closed and matter was listed for PE. Thereafter, counsel for defendant kept on appearing on subsequent dates but no application was filed. By way of this application defendant wants to seek condonation of delay in filing the written statement. The ground taken in the application is that no complete paper book of “amended plaint” was given to the defendant/counsel of the defendant and due to that reason written statement was not filed.

Even the defendant suffered from viral fever and could not get the written statement prepared. No medical prescription filed with the application. No cogent reason given by the counsel for the defendant as to why he had not inspected the file regarding the paper book or moved any application that appropriate paper book was not supplied.

So, in these circumstances, no plausible reason has been put forward by the defendant for condoning the delay. Accordingly, the application is dismissed.”

3. Learned counsel for the Petitioner states that the Petitioner herein did



not file his written statement as he was defending proceedings before the District Magistrate in separate proceedings initiated by Respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('Act of 2007'). He states that the Petitioner herein had suffered eviction order with respect to the suit property in the said proceedings. He states that the Petitioner succeeded in the appeal before the District Magistrate on 23.02.2023; the eviction order has been set aside and for this reason there was a delay in filing the written statement. He states that while the eviction order was in operation, the Petitioner believed that the present proceedings seeking the same relief of possession was duplication.

3.1. He states that the Petitioner undertakes to cooperate in the expeditious disposal of the suit and not seek any adjournment before the Trial Court.

3.2. He states that the written statement of the Petitioner was drafted and signed on 28.11.2022 itself; however, the same was not taken on record with the application filed under Order VIII Rule 10 of CPC.

4. In reply, the learned counsel for Respondent states that the plea now raised by the counsel for the Petitioner finds no mention in the application filed under Order VIII Rule 10 of CPC and is, therefore, an afterthought. He states that the Respondent has led its evidence. He states that the Petitioner failed to cross examine the witnesses and the evidence stands concluded. He states that the matter is now at the stage of the final arguments. He states that the Petitioner has delayed the suit proceedings and opportunity, if any, be granted to him subject to payment of costs and on strict terms.

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

6. The Petitioner has placed before this Court the original of the written



statement signed and affirmed by him on 28.11.2022. A copy of the said written statement has been provided to the counsel for the Respondent during the course of the hearing.

7. The suit pertains to possession of the suit property and mesne profits. The parties are related to each other being parent and child. The Coordinate Bench of this Court in ***Randhir Singh v. Urvashi Suri, 2023 SCC OnLine Del 2644***, after taking note of the judgments of the Supreme Court and this Court and while considering the issue of closing the right of the defendant to file written statement has 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)

8. In the light of the above said dicta, this Court is of the opinion that it would subserve the interest of justice and the Respondent, if the defence of the Petitioner is considered and the final judgement is passed on the merits of



the claim raised by the Respondent. It will also preclude arguments of non-consideration of the defence of the Petitioner being raised against the final judgment, save multiplicity of proceedings and bring finality to the judgment.

9. Accordingly, in view of the aforesaid decision, the Petitioner herein is granted one last and final opportunity to file his written statement, subject to payment of cost of Rs.75,000/- to the Respondent within a period of two (2) weeks from today and on the following terms and conditions:

- (i) The duly signed copy of the written statement along with affidavit shall be placed on record of the Trial Court on or before 06.09.2023. A copy of the said written statement has already been served on the Respondent and the Petitioner will not carry out any changes in the written statement filed before the Trial Court.
- (ii) The affidavit of admission/denial of documents filed with the plaint shall be filed with the Trial Court and served on the counsel for the Respondent on or before 06.09.2023.
- (iii) Additional documents, if any, relied upon by the Petitioner shall be filed before the Trial Court on or before 06.09.2023 with an advance service to the Respondent.
- (iv) The Respondent will file its replication within one week after receiving the documents and affidavit of admission/denial of documents.
- (v) No extension of time will be granted to the Petitioner for completing the aforesaid steps.

10. Subject to the aforesaid compliance, the order dated 26.09.2022 passed by the Trial Court is set aside and the Trial Court is directed to take the written statement on record. In case the Petitioner fails to comply with the aforesaid



steps and/or fails to pay the costs of Rs. 75,000/-, the defence of the Petitioner shall be struck off.

11. The statement of the learned counsel for the Petitioner recorded at paragraph 3.1 is taken on record and he is bound down to the same.

12. The Trial Court is requested to exercise its jurisdiction under Order XVII CPC in case parties seek unnecessary adjournment.

13. With the aforesaid directions, the petition stands disposed of. Pending application also stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 29, 2023/mr/aa

[Click here to check corrigendum, if any](#)