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

Date of decision: 29.08.2023

+ CM(M) 896/2023 & CM(M) 28471/2023

RAM VARAN @RAM BARAN

..... Petitioner

Through: Mr. Sanjay Kumar, Advocate.

versus

SMT. KAMLESH AND ANR

..... Respondents

Through: Mr. M.K. Singh, 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 the Constitution impugns the order dated 11.03.2020 and 27.04.2023 passed by ADJ-04, District North West, Rohini Court, Delhi ('Trial Court') in CS No. 513/2019, titled as ***Kamlesh & Ors. v. Ram Varan & Ors.***

1.1 The Trial Court vide order dated 11.03.2020 declined to take the written statement of the Petitioner on record as it had been filed beyond the statutory period.

1.2 The Trial Court vide order dated 27.04.2023 dismissed the applications filed by the Petitioner herein for condoning the delay in filing the written statement and for recalling the order dated 11.03.2020.

2. The learned counsel for the Petitioner states that the delay in filing the written statement occurred as the counsel initially engaged by the Petitioner i.e., Mr. Virender Sharma fell seriously ill and subsequently passed away. He states that the Petitioner, thereafter engaged a new counsel to defend the matter and, therefore, the delay caused was for the circumstances beyond the control of the Petitioner.



2.1 He states that the Petitioner undertakes that he will co-operate in the expeditious disposal of the suit; not seek any unnecessary adjournments before the Trial Court and will be duly represented by a counsel in the proceedings.

2.2 He states that he is willing to pay costs to the Respondent for the delay caused in filing of the written statement.

3. In reply, learned counsel for the Respondents states that the summons in the suit were admittedly served on the Petitioner on 31.07.2019 and till date the suit has not proceeded because of the delay tactics of the Petitioner.

3.1 He states that subject to the Petitioner being bound down to his undertaking for the expeditious disposal and costs being imposed on him, he has no objection if the impugned order is set aside.

3.2 He states that suit is at the stage of recording of the evidence of the plaintiff and affidavit by way of evidence has not been filed as of now.

4. This Court has considered the submission of the counsel for the parties and perused the record.

5. The parties are related to each other and are siblings. The suit has been filed for partition of the property bearing No. P4-57, Sultan Puri, Delhi measuring 225 Sq. yard and Vehicle No-DL T1556.

6. In this matter the written statement was filed before the Trial Court on 11.03.2020, however, the same not taken on record as the same was not accompanied by an application for condonation of delay.

7. This Court is of the opinion that it is in the interest of justice that the claims of the Respondents in the suit are decided on merits after considering the defence of the Petitioner.

8. Therefore, this Court deems it appropriate to direct that the written statement of the Petitioner be taken on record, subject to following



conditions:-

- (i) The Petitioner shall pay cost of Rs.10,000/- each to Respondent No. 1 and Respondent No. 2 i.e., Smt. Kamlesh and Smt. Rajani respectively;
 - (ii) The Petitioner shall file his affidavit of admission/denial of the documents filed with the plaint, within two (2) weeks;
 - (iii) The Petitioner will file all documents it seeks to place reliance on within two (2) weeks;
 - (iv) The Petitioner shall remain present on each date of hearing before the Trial Court either himself or through his counsel and will not seek any unnecessary adjournment.
 - (v) The Petitioner will co-operate in expeditious disposal of the suit.
 - (vi) In case of default in compliance with the aforesaid directions, the defence of the Petitioner will be liable to be struck off.
9. The Respondent will be at liberty to file their replication within a period of two (2) weeks after receipt of the affidavit of admission/denial of documents. The Respondent will also file an affidavit of admission/denial of documents filed by the Petitioner with the documents.
10. With the aforesaid directions, the present petition is disposed of and the orders dated 11.03.2020 and 27.04.2023 are set aside. Pending application(s) also stand disposed of. The cost will be paid within two (2) weeks from today.
11. List before the Joint Registrar (Judl.) for compliance on 21.09.2023.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 29, 2023/mr/sk