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

Date of decision: 02.08.2023

+ CM(M) 1059/2023

M/S SUPERUS GUESTHOUSE HOSPITALITIES PVT. LTD. &
ANR. Petitioners

Through: Mr. Atul Kumar and Mr. Jayant Malik,
Advocates

versus

VARGHESE GEORGE Respondent

Through: Mr. K.M. Vignesh Ram, 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 of India impugns the order dated 02.05.2023 passed by Additional District Judge-01, Patiala House Court, New Delhi in Civil Suit no. 6712020 titled as **Varghese George v. M/S Superus Guesthouse Hospitalities Pvt Ltd** ('Trial Court'), whereby the Trial Court has dismissed the Petitioner's application under Order IX Rule 7 Code of Civil Procedure ('CPC') for setting aside the order dated 02.11.2022 along with the application filed under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the written statement.

1.1. The Trial Court *vide* order dated 02.11.2022, closed the right of the Petitioners to file a written statement, since the Petitioners had failed to file the written statement.



1.2. The Petitioners are defendants and the Respondent is the plaintiff in the civil suit file for recovery of money.

2. The learned counsel for the Respondent has entered appearance on advance service. He states that the Petitioners have not shown any just cause for their non-appearance before the Trial Court despite due receipt of summons and the delay in filing the written statement.

2.1. He states that the Trial Court at paragraph 10 of the impugned order accurately sets out the negligence exhibited by the Petitioners herein in conducting the trial. Paragraph 10 of the impugned order reads as under:

“10. Very conveniently condonation of delay was sought on account of applicants/ defendants being let down by their previous counsel. The record shows that appearance was entered on behalf of the defendant on 05.07.2021 through counsel Sh. Rashid Saeed followed by appearance of Ms. Aashi Arora on 08.09.2021 as well as 20.01.2022. On these dates, the proceedings were conducted through video conferencing. However, no vakalatnama till, then was on record. Thereafter, the effective hearing was held before this court on 30.05.2022 and one Sh. Salauddin Qureshi without any authority appeared. Even though, it is sought to be shown that the previous counsel was not diligent but considering that no vakalatnama was filed till 03.03.2023 and as board resolution of the defendant no. 1 is itself dated 12.11.2022 (after the Court proceeded ex-parte against the defendants/ applicants and even the SPA of defendant no. 2 in favour of attorney Sh. Salahuddin Qureshi is dated 13.03.2022), the attempt to shift all blame upon the previous counsel falls flat. It is apparent from the record that till, 12.11.2022, the applicants/ defendants had not taken any steps to appropriately defend themselves. Therefore, the ground on which condonation of delay has been sought is frivolous and fails to inspire the confidence of this Court. It is for this reason that the Court is neither inclined to condone the delay in preferring application under Order IX Rule 7 CPC or allow application under Order IX Rule 7 CPC as they are premised upon exactly similar averments.”

(Emphasis supplied)

2.2. He states that though the Petitioners were proceeded ex-parte on 02.11.2022, the Petitioners elected to file the application under Order IX Rule 7 CPC and the written statement after a further delay of 146 days only on



29.04.2023.

2.3. He states on 03.03.2023, the Petitioners herein had entered appearance through a new lawyer who filed his vakalatnama, however, even on the said date no appropriate application was filed for setting aside of the order dated 02.11.2022. He states in fact the legal costs of Rs. 5,000/- imposed *vide* order dated 03.03.2023 have not been paid till date.

2.4. He states that the Respondent herein has examined two witnesses i.e., PW-1 and PW-2 on 02.11.2022 and 17.01.2023 respectively. He states that the matter is now listed on 23.08.2023 for addressing final arguments. He states that Respondent is an employee and has instituted this civil suit for recovery of an amount of Rs. 4,20,000/- plus interest, which is due to him.

2.5. He states that however, to expedite the final adjudication, the impugned order may be set aside subject to the Petitioners being put to strict terms that they will not seek any further adjournments in the matter and are directed to pay compensatory costs to the Respondent for the delay caused in the trial.

3. In reply, learned counsel for the Petitioners states on instructions that Petitioners are willing to pay legal costs to the Respondents and give an undertaking to this Court that no adjournment will be sought before the Trial Court on any date of hearing. He states that the Petitioners will duly cooperate with the Trial Court and they will ensure that they are duly represented by the counsel and no adjournment will be sought on the ground of the unavailability of the counsel.

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

5. In the opinion of this Court the impugned order dated 02.05.2023 passed by the Trial Court does not suffer from any infirmity and is correct in



facts.

6. In the facts of this case, it would be appropriate to refer to the case of ***Randhir Singh v. Urvashi Suri*** passed by the learned Single Judge of this Court in ***CM (M) 717/2023 dated 04.05.2023*** where 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, the learned Single Judge 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)

7. 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 Petitioners 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 Petitioners being raised against the final judgment, save multiplicity of proceedings and bring finality to the judgment.

8. Therefore, in the facts and circumstances of the present case and taking into consideration the undertaking given by the Petitioners (as recorded at paragraph 3), this Court is of the view that the Petitioners should be given an opportunity to defend the case on merits, subject to strict terms and set out hereinafter.

9. Accordingly, the impugned orders dated 02.05.2023 and 02.11.2022 are set aside and the written statement of the Petitioners is directed to be taken on record.

10. Firstly, the aforesaid opportunity of taking the written statement on record is being granted subject to the Petitioners making payment of legal costs of Rs. 50,000/- to the Respondent on or before 23.08.2023 i.e., the date already fixed before the Trial Court.

11. Secondly, the Petitioners in addition will also make payment of legal costs of Rs. 5,000/- imposed by Trial Court *vide* order dated 03.03.2023, on or before 23.08.2023.

12. Thirdly, the Petitioners will file their affidavit of admission and denial of documents filed with the plaint and the additional documents taken on record *vide* order dated 02.05.2023; on or before 23.08.2023.

13. Lastly, the undertaking of the Petitioners recorded at paragraph 3 is taken on record and they are bound down to the same.

14. It is made clear that if there is any default by the Petitioners in complying with the directions issued hereinabove, the defence of the Petitioners shall be struck off and no further opportunity will be granted to them. No application for extension of time will be entertained.



15. With the aforesaid directions, the present petition is allowed. Pending applications stand disposed of.

16. The quantum of imposition of legal costs of Rs. 50,000/- has been issued with the consent of the parties.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 2, 2023/hp/ms

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



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