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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 09.08.2023*+ CM(M) 1219/2023 & CM APPL. 39006/2023
CHARU WALIA

..... Petitioner

Through: Mr. Prag Chawla and Ms. Jaspreet
Kaur, Advocates.

versus

SUNITA KASHYAP @SUNITA
SHARMA & ORS.

..... Respondent

Through: Ms. Divya Upadhyay and Mr. Ikrant
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):**

1. This petition filed under Article 227 of Constitution of India impugns the order dated 11.07.2023 passed by the ADJ-04, North West District, Rohini Courts, Delhi ('Trial Court') in CS DJ No. 758/2019, titled as '**Sunita Kashyap @ Sunita Sharma & Ors. v. Charu Walia**', whereby the Trial Court dismissed the following applications filed by the Petitioner:

- 1.1. Application under Order VIII Rule 10 for recalling of order dated 30.05.2022 and taking on record the written statement;
- 1.2. Application under Order VIII Rule 1 read with Section 5 of Limitation Act, 1963, for condonation of delay in filing the written statement; and
- 1.3. Application under Section 151 of CPC for recalling order dated



31.08.2022 and taking on record the written statement.

1.4. The Petitioner is the original defendant in the civil suit and the Respondents are the original plaintiffs.

2. The Respondents filed a civil suit for possession and recovery of mesne profits/damages in respect of Shop No. 1825, Gali No. 137, Shanti Nagar, Tri Nagar, New Delhi ('tenanted premises') against the Petitioner herein.

2.1. The summons was issued by the Trial Court to the Petitioner on 01.11.2021, returnable on 18.01.2022. The counsel for the Petitioner entered appearance on 18.01.2022 and informed the Trial Court that only copy of one application for waiver of cost was received with the summons, however, no copy of the plaint was provided.

2.2. The suit was thereafter listed on 05.03.2022, however, the Presiding Officer was on leave and the matter was adjourned to 30.05.2022, on which date the Trial Court closed the right of the Petitioner to file the written statement and listed the matter for plaintiff evidence.

2.3. The Petitioner thereafter filed the aforesaid applications (referred to at paragraph 1.1, 1.2 and 1.3 of this order) before the Trial Court, which were dismissed by the Trial Court vide impugned order dated 11.07.2023.

3. This matter was first listed before this Court on 02.08.2023, when the learned counsel for the Petitioner in order to show his bona fides and substantiate the stand taken in this petition agreed to handover the physical, peaceful and vacant possession of the tenanted premises to the Respondents.

3.1. The matter has been taken up today and both the parties confirm that physical, peaceful and vacant possession of the subject property has been handed over to the Respondents.

4. The Learned counsel for the Petitioner states that the reason why the



Petitioner herein did not file the written statement was on account of the ongoing mediation talks between the parties and the counsel. He states that couple of days before 30.05.2022 i.e., the date of hearing before Trial Court, the counsel for the Respondents, Sh. Ikrant Sharma, had approached the counsel for the Petitioner to settle the dispute. He states that after a brief discussion the counsel for the parties arrived at an amicable solution, wherein the Petitioner was to handover the vacant and physical possession of the tenanted premises and the Respondents were to waive off the damages and arrears of rent. He states that on account of the aforesaid circumstances, the Petitioner bona fide did not file the written statement so that the matter could be amicably settled and disposed off without further proceedings.

4.1. He states that the adjudication of the issue of *mesne* profits without considering his defence will cause grave prejudice to the Petitioner.

4.2. He states that he will file his affidavit of admission denial of documents filed by the Plaintiff within one (1) week.

5. In reply, the learned counsel for the Respondents states that she has no objection if the written statement is taken on record subject to imposition of legal costs. She states that she, however, does not admit to the averments made in the petition justifying the delay in the non-filing of the written statement.

6. This Court is of the opinion that the Petitioner has shown her bona fide by handing over the vacant, physical and peaceful possession of the tenanted premises.

7. 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)

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 Respondents, if the defence of the Petitioners is considered and the final judgement in the civil suit is passed on the merits of the claim raised by the Respondents. 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.

9. Accordingly, the impugned order dated 11.07.2023 and order dated 30.05.2022 are set aside and the written statement and affidavit of admission/denial of documents filed by plaintiff, is directed to be taken on



record subject to the Petitioner making of payment of legal costs of Rs. 25,000 to the Respondent, within one (1) week. Consequentially the Petitioner is granted opportunity to lead evidence and cross examine the witness of Respondent, in accordance with law.

10. The Respondent shall file replication within four weeks subject to receiving costs of Rs. 25,000/- within two weeks from today.

11. It is made clear that this Court has not expressed any opinion on the averments made in the petition with respect to the mediation talks between the parties during the pendency of the suit. The rival contentions of the parties will be examined by the Trial Court and the claims raised in the plaint will be determined on their own merits and in accordance with law.

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

MANMEET PRITAM SINGH ARORA, J

AUGUST 9, 2023/msh/aa

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

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