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

Date of decision:04.08.2023

+ **CM(M) 1237/2023, CM APPL. 39551/2023 & 39552/2023**

MR. RAKESH

..... Petitioner

Through: Mr. Varun Tyagi, Advocate

versus

MS. BABITA TYAGI & ORS.

..... Respondents

Through: None.

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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):

CM APPL. 39553/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1237/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 05.06.2023 passed by ADJ-03, West District, Tis Hazari Courts, Delhi ('Trial Court') in Civ. DJ. no. 723/2017, titled as '**Babita Tyagi v. Rakesh**', whereby the Trial Court has dismissed the Petitioner's application filed for recalling its order dated 18.01.2018.

1.1 The Trial Court vide order dated 18.01.2018 struck off the right of the Petitioner to file the written statement.

2. The Petitioner is defendant no.1 and Respondent No.1 is the plaintiff in



the civil suit.

2.1 The civil suit has been filed for partition of the properties bearing Nos. WZ-64 and WZ-490, Basari Darapur, New Delhi ('suit property') owned by late Mr. Rajbal Tyagi. In addition to the Petitioner herein, Respondent No.2 (since deceased) and Respondent No.3 as well have been impleaded as defendants in the civil suit, as legal heirs of late Mr. Rajbal Tyagi.

3. At the outset, learned counsel for the Petitioner states that he concedes that there has been a default by the Petitioner in failing to ensure that his written statement was filed on record within a statutory period. He states that however, he is willing to compensate the plaintiff with legal costs for delay in filing the written statement.

3.1 He states that the suit is still at the stage of completion of pleadings inasmuch as late Mr. Narender (i.e., defendant no.2) expired on 11.02.2019 and his legal representatives have since been brought on record and their written statement as well is awaited.

3.2 He states the defendant no.3, Mr. Braham Prakash, has also since expired on 04.01.2023 and the proceedings are pending for bringing his legal representative on record.

3.3 He states that in fact Ms. Sharda, daughter of late Mr. Rajbal Tyagi has also filed an application under Order 1 Rule 10 of CPC, seeking her impleadment in the suit, which is pending adjudication.

3.4 He states that therefore, the suit is still at an initial stage and pleadings of the other defendants is also not on record.

3.5 He states that the written statement along with documents has since been filed by the Petitioner herein before the Trial Court on 17.04.2013, however, the same has not been taken on record. He states that therefore,



permitting the Petitioner, who filed the written statement at this stage will be in the interest of the parties as the defence of the Petitioner herein will also be brought on record.

4. None appears on behalf of the Respondent No.1 despite advance service.

5. In the facts and circumstances of this case, considering that (i) the suit is still at the stage of completion of pleadings; and (ii) the application for bringing the legal representatives on record of late Mr. Braham Prakash i.e., defendant no.3) (iii) as well as the impleadment application of Ms. Sharda are pending, this Court is of the opinion that though undoubtedly the Petitioner herein has been negligent in filing his written statement and therefore, the impugned order is correct in facts, however, since it is a suit for partition and the written statement of the other defendants is awaited, the delay caused by the Petitioner herein should be condoned subject to the Petitioner paying legal costs to the Respondent No. 1.

6. The Predecessor Bench of this Court while condoning delay in filing the written statement, in the judgment of ***Randhir Singh v. Urvashi Suri, 2023 SCC OnLine Del 2644***, observed as under:

“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.”

(Emphasis supplied)



7. Accordingly, the written statement of the Petitioner along with documents, filed with the application dated 18.04.2023 is directed to be taken on record.

7.1. The Petitioner shall also file his affidavit of admission/denial of documents filed by the plaintiff, within a period of two (2) weeks.

7.2. In addition, the Petitioner shall pay costs of Rs. 50,000/- to the Respondent No. 1 within a period of two (2) weeks.

7.3. It is made clear that if the Petitioner fails to avail this opportunity and defaults in making the payment of costs and/or filing his affidavit of admission/denial of documents within the time granted, the liberty granted by this order shall stand automatically revoked.

8. Further, the Petitioner undertakes to the Court that he shall not seek any unnecessary adjournment before the Trial Court and co-operate in the expeditious trial. The said undertaking is taken on record and he is bound down to the said undertaking.

9. With the aforesaid directions, the present petition is allowed and the impugned order dated 05.06.2023 and 18.01.2018 are set aside, in the aforesaid terms. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 4, 2023/rk/aa

Click here to check corrigendum, if any