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

Date of decision: 22.08.2023

+ CM(M) 1347/2023 & CM APPL. 43066/2023

HARSH TANEJA & ANR.Petitioners

Through: Mr. Dushyant Yadav and Mr. Kartik
Yadav, Advocates

versus

MANJU TANEJA Respondent

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. 43067/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1347/2023 & CM APPL. 43066/2023

1. This petition filed under Article 227 of the Constitution of India impugns the orders dated 01.03.2023 and 19.07.2023 passed by the ADJ, South East District, Saket Court, New Delhi ('Trial Court') in CS DJ No. 558/2022 titled as "**Manju Taneja v. Harsh Taneja & Anr**".

1.1. The Trial Court *vide* order dated 01.03.2023 closed the right of the Petitioners to file their written statement.

1.2. The Trial Court *vide* order dated 19.07.2023 dismissed the application filed by the Petitioners under Order VIII Rule 1 Code of Civil Procedure ('CPC') to condone the delay in filing the written statement. The written



statement was enclosed with the said application.

1.3. The Petitioners are the defendants and the Respondent is the plaintiff in the civil suit. The civil suit has been filed for possession mesne profits, permanent injunction and mandatory injunction

2. At the outset, the learned counsel for the Petitioners states that there has been an admitted delay of 180 days in filing the written statement.

2.1. He states that the Petitioners were in the process of collating facts necessary for preparing the written statement as some of the material facts were not brought to the knowledge of the Petitioners by Late Smt. Savitri Devi.

2.2. He states that however, in view of the judgement of the Supreme Court in *Bharat Kalra vs. Raj Kishan Chabra*; 2022 SCC Online SC 613 and *Kailash vs. Nankhu & Ors.*; (2005) 4 SCC 480 in an ordinary civil suit the civil court has jurisdiction to enlarge the time limit for filing the written statement.

2.3. He further states on instructions from the Petitioners that the Petitioners are willing to pay compensatory cost of Rs. 50,000/- to the Respondent within the time granted by this Court.

2.4. He states that the Petitioners have substantial defence to the claim raised by the Respondent in the civil suit and great prejudice will be caused to the Respondent, if the defence is not brought on record.

2.5. He states that the Petitioners undertake that he will cooperate with the Trial Court in expeditiously disposal of the civil suit.

3. None appears on behalf of the Respondent despite advance service.

4. This Court has heard the learned counsel for the Petitioners and perused the record.



5. The civil suit has been filed *inter alia* for recovery of possession and mesne profits. The parties are family members and are related to each other. The suit for recovery has been filed on the basis of a registered Will dated 28.01.2016 stated to have been executed by the mother of the Petitioner No. 1 herein in favour of the husband of the Respondent.

6. A learned Single Judge of this Court in ***Randhir Singh v. Urvashi Suri*** decided in ***CM (M) 717/2023 dated 04.05.2023*** after taking note of the judgments of the Supreme Court and this Court, while considering the issue of closing the right of the defendant to file written statement, 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. The issues arising in the civil suit pertaining to title of the subject property and recovery of possession, the interest of justice would be best served if the claims of the plaintiff are decided on the merits after considering



the defence of the defendants.

8. It is apparent from the record that the Respondents herein have been negligent in filing the written statement and Trial Court was right enclosing the right of the Respondent *vide* order dated 01.03.2023. However, in view of the fact that since the Petitioners have taken corrective steps and moved an application for placing on record their written statement as well as file an application for enlargement of time; and since as on the said date, the proceedings before the Trial Court are still at the stage of pleadings.

9. Accordingly, the impugned orders dated 01.03.2023 and 19.07.2023 to the extent impugned in this petition are set aside subject to fulfilment of following conditions:

- i. This Court deems it appropriate to grant permission to the Petitioners to place on record their written statement subject to payment of cost of Rs. 50,000/- to the Respondent within a period of two (2) weeks from today.
- ii. The Petitioners are directed to move an appropriate application before the Trial Court and have it listed on or before 05.09.2023 and place on the record of the Trial Court a demand draft for the sum of Rs. 50,000/- in favour of the Respondent/plaintiff.
- iii. The undertaking of the Petitioners that there will be no further default in appearing before the Trial Court and they will remain represented through a counsel on each date of hearing and cooperate with the Trial Court for an expeditious disposal of the suit is taken on record.

10. The Trial Court on 05.09.2023 is requested to issue further directions for filing of replication and affidavit of admission/denial of documents in accordance with law.

11. It is made clear that if there is any default in making payment of legal



costs on or before 05.09.2023 as directed above the Petitioners right to file written statement shall stand closed and no further opportunity will be granted to the Petitioners.

12. With the aforesaid directions, the petition along with pending application is disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 22, 2023/rhc/ash

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

