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

*Date of decision: 21.11.2023*

+ **CM(M) 1490/2023 & CM APPL. 47385/2023**

SUNITA JAIN & ANR. .... Petitioners

Through: Mr. Sunil Kumar, Advocate

versus

MINAKSHI RATHI @ MINAKSHI DEVI & ANR.

..... Respondents

Through: Mr. Raghav Sharma, Advocate for  
R-1

Mr. Arun Kumar Shukla and Mr.  
Manas Shukla, Advocates for R-2

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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 10.08.2023 passed by the ADJ-01, Karkardooma Courts, Delhi ('Trial Court') in civil suit no. 113/2022, titled as '**Minakshi Rathi v. Sunita Jain and Ors.**', whereby the right of the defendants to file the written statement has been closed.

2. The Petitioner nos. 1 and 2 are defendant nos. 1 and 2 respectively, the Respondent no.1 is the plaintiff and Respondent no.2 is defendant no.3 in the civil suit. The civil suit has been filed by the plaintiff seeking



declaration, possession, recovery of damages and permanent and mandatory injunction with respect to property bearing no. 109/3/1-B, Plot No. 124, Khasra No. 960/291-293, Khara No. 63/71 situated at East Azad Nagar, Village Ghondli, Shahdara, Delhi ('suit property').

3. Learned counsel for the defendant nos. 1 and 2 states that as far as defendant no.1 is concerned, since, the date of service through publication is 13.06.2023; no undue delay has been caused.

3.1. He states that with respect to defendant no.2, he is unaware of the reasons for delay of 180 days in filing of the written statement on 03.04.2023, despite service of summons on 10.10.2022.

3.2. He states that defendant nos. 1 is willing to adopt the written statement filed by defendant no.2 on 03.04.2023 and he therefore, prays that the impugned order be set aside and the defendant nos. 1 and 2 be permitted to contest the civil suit relying upon the common written statement.

3.3. He states that the defendant nos. 1 and 2 are willing to compensate the plaintiff with costs of Rs. 10,000/- for the delay caused in filing the written statement.

3.4. He states that the defendant No.1 is the sister-in-law of defendant no.2.

4. In reply, learned counsel for Respondent No. 1 i.e., plaintiff, states on instructions that the plaintiff is unwilling to accept the legal costs offered by the defendants. He states that the said defendants are intentionally delaying the matter in order to protract the trial proceedings.

4.1. He states that the plaintiff purchased the suit property being the highest bidder in an E-auction sale conducted by the Debt Recovery Tribunal-1, Delhi, in O.A. No. 27/02 and he has paid the entire amount of



Rs. 45,00,000/- to Respondent No.2 i.e., the bank.

4.2. He states that the facts on record evidence that both the defendant nos. 1 and 2 were deliberately avoiding service of summons in the suit to protract the Trial. In this regard, he relies upon the orders dated 11.07.2022 and 15.10.2022 passed in the suit proceedings.

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

6. The Trial Court in its impugned order, with respect to defendant no.1 held that though the said defendant had been served by way of publication on 13.06.2023, she failed to file her written statement within 30 days and therefore, her right was closed.

7. With respect to defendant no.2, the Trial Court observed that though the said defendant was duly served on 10.10.2022, however, the written statement was filed on 03.04.2023 and the same is barred by limitation.

8. The Court is in agreement with the submissions of the counsel for plaintiff that the defendant nos. 1 and 2 herein are trying to delay the trial proceedings. The conduct of the parties in this regard is evident from the following:

8.1. As per the Trial Court's order dated 11.07.2022, summons issued to defendant no.1 at the address mentioned in the memo of parties of the plaint, were received back with the report that 'no such person found'. Further, the order records that the summons issued to defendant no.2 were received back 'served' through her daughter. However, since none appeared on behalf of defendant no.2, the Trial Court by way of abundant caution issued fresh summons to defendant no.2 for the next date.

8.2. In view of the service report stating that 'no such person found' at



defendant no.1's address mentioned in the memo of parties of plaint, the plaintiff was constrained to take alternative steps of service by publication on defendant No. 1 as recorded in order dated 15.10.2022. The plaintiff therefore, incurred costs of publication and lost time in the trial.

8.3. The defendant no.1 subsequently entered appearance before the Trial Court on 10.08.2023. However, pertinently, in the affidavit filed by the defendant no.1 along with this petition, it mentions the same address as was in the memo of parties of the plaint. The service of summons was duly attempted on the said address as recorded in the order dated 11.07.2022.

8.4. This Court therefore, finds merit in the submission of counsel for plaintiff that the defendant no.1, despite being served with summons and being aware of the pendency of the suit proceedings, has delayed the matter since 07.03.2022.

8.5. Similarly, with respect to defendant no. 2 as recorded in the Trial Court's order dated 11.07.2022, summons were served on his daughter; however, the defendant no.2 did not enter appearance. The Trial Court as a matter of abundant caution, issued directions for fresh service on defendant No. 2 and it was in these circumstances of re-service that the said defendant was served again on 10.10.2022.

8.6. Further, as noted above, counsel for the defendants has no explanation for the time taken by defendant no.2 in filing the written statement 03.04.2023.

8.7. In the facts of this case, it is therefore, evident that defendant nos. 1 and 2 have been duly served with the summons as recorded in order dated 11.07.2022. However, they have elected not to file the written statement within the prescribed period of limitation intentionally. The defendant nos. 1



and 2 were not precluded by any circumstances beyond their control from filing the written statement within the time prescribed in the statute.

9. In this regard, it would be apposite to refer to judgment of Coordinate Bench of this Court in ***Kailash Sewani v. Manish Kumar Chaudhary, 2022 SCC OnLine Del 2533***, wherein the Court has as under:

*“10. The jurisdiction vested in this Court by Article 227 of the Constitution of India is not expected to be used as an avenue for a party to tide over the negligence exhibited by it before the Court below. Nor is Article 227 in the nature of mercy jurisdiction. Litigants cannot be casual about prosecuting the proceedings before the Court below and expect sanctuary from the High Court under Article 227.*

(Emphasis Supplied)

10. Further, the High Court of Bombay in its judgment dated 24.09.2020, titled as ***‘Gunwantiben Kishorchandra Shan v. Smt. Manjulaben Indukumar Ghiya’*** has observed as under:

*14. The learned counsel for the petitioners is justified in relying upon the judgment of this Court in the case of Parasmal Daulatram Jain Vs. Rameshwar Rathanlal Karwa (supra), wherein this Court has reiterated the position of law concerning the approach to be adopted by the Courts while considering permission to the defendant to file written statement beyond the stipulated period of time. This Court placed reliance on the judgment of the Hon'ble Supreme Court, wherein it has been categorically stated that even if the relevant provisions of the Code of Civil Procedure in this regard can be said to be directory and not mandatory, the Courts cannot permit laxity or gross negligence on the part of the defendant to be condoned while granting permission to file written statement. In the facts of the present case, this Court is of the opinion that if the impugned order passed by the Court below is upheld, it would amount to giving premium to the respondent, not only for laxity and gross negligence, but to tactics adopted by her to somehow delay the proceedings in the suit for eviction filed by the petitioners. Although, it is expected that Courts decide disputes between parties by giving opportunity to the contesting party to place their respective versions on merits, there are situations where the Courts ought not to show misplaced indulgence to litigants like the respondent herein by adopting a liberal approach.”*

(Emphasis Supplied)

11. In the facts of this case, it is also relevant to note that the defendant



nos. 1 and 2

12. In view of the aforesaid, this Court does not find any infirmity in the impugned order and considering the fact that the Respondent No. 1 is an auction purchaser, having purchased the suit property in an E-auction sale, it is evident that the non-appearance of the defendants in the present proceedings has been orchestrated with a design to deny the Respondent a fair trial.

13. Therefore, no grounds are made out for exercise of the supervisory jurisdiction of this Court in this petition and accordingly, the petition is dismissed. Pending applications, if any, disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**NOVEMBER 21, 2023/rhc/aa**

*Click here to check corrigendum, if any*