



\$~70

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

Date of decision: 19.09.2023

+ **CM(M) 1525/2023 & CM APPL. 48323/2023**

TARUN KUMAR

..... Petitioner

Through: Mr. Rahul S. Sahay, Advocate
(through VC)

versus

SMT SAROJ BALA & ANR.

..... Respondents

Through: None.

%

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. 48324/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1525/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 10.05.2023 passed by ADJ-02, East District, Karkardooma Courts, Delhi ('Trial Court') in civil suit no. 462/2022, titled as '**Saroj Bala v. Tarun Kumar**', whereby the Trial Court closed the right of the Petitioner herein to file his written statement in view of the fact that despite due service of summons in November, 2022, no written statement was filed by



the Petitioner.

1.1 The Petitioner is defendant No.1, Respondent no.1 is the plaintiff and Respondent No.2 is arrayed defendant No.2 in the civil suit. The Petitioner and Respondent No.2 are the sons of Respondent No.1.

2. The learned counsel for the Petitioner states that the Petitioner was unable to file the written statement on account of being pre-occupied with the illness of his wife, his child and self. He states that the written statement has not been filed even with this petition.

2.1 He states that the Petitioner is not in a position to pay any compensatory costs to the Respondent No.1 for the delay in filing the written statement.

3. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

4. A civil suit for partition and permanent injunction has been instituted by Respondent No.1 herein i.e., the mother of the Petitioner herein, with respect to property bearing no. 26, 2nd floor, Gali No.1, Dayanand Block, Shakarpur, Delhi – 110092 ('suit property'), admeasuring 100 sq. yds., seeking a declaration that each of the three (3) parties are entitled to three (3) equal shares. The Respondent No.1 is seeking partition of the suit property by metes and bounds.

4.1 In the plaint, the Respondent No.1 has categorically stated that the Petitioner herein has been attempting to dispose of the suit property to third parties without permitting the Respondent No.1, to realise her admitted 1/3rd share in the suit property. She has also averred that the relationship between her and Petitioner are estranged since the year 2016. The Respondent No.1 in her plaint has stated that she wants to partition the suit property and live



independently. She has also made a reference to the fact that the Petitioner's wife had, in past, in the year 2021, filed a false complaint against her and her deceased husband, which was subsequently settled in mediation in the year 2022. She has in the aforesaid acrimonious circumstances pleaded the cause of action for seeking partition of the suit property.

5. The summons in the said suit were issued on 07.09.2022 and were duly received by the Petitioner herein, as per his stand, on 01.11.2022. The matter was listed before the Trial Court on 10.11.2022.

6. Though, the Petitioner was provided with a legal aid counsel on his request, he continued to successively change the legal aid counsel multiple times and, thereafter, when the matter was listed before the Trial Court six (6) months later on 10.05.2023, the Petitioner had still not taken any steps towards filing his written statement before the Trial Court. Further, there was no application filed before the Trial Court for enlargement of time to file the written statement.

7. In these circumstances, the Trial Court vide impugned order dated 10.05.2023 closed the right of the Petitioner to file the written statement. There is therefore no infirmity in the impugned order of the Trial Court closing the right of the Petitioner herein to file the written statement.

8. The Trial Court vide order dated 03.07.2023, proceeded to frame issues in the matter and listed it next for plaintiff's evidence on 19.09.2023.

9. The Petitioner has however, remained content with the aforesaid state of affairs. Though, the impugned order was passed by the Trial Court on 10.05.2023, the Petitioner after a further passage of almost four (4) months from the passing of the impugned order dated 10.05.2023, has now filed the present petition, which is listed for the first time today i.e., on 19.09.2023.



The Petitioner is further seeking a stay of the proceedings pending before the Trial Court by way of CM APPL. No. 48323/2023.

10. The Petitioner has elected not to file his written statement even with this petition either. In this manner, no written statement has come forth from the Petitioner herein, despite passage of twelve (12) months from September, 2022, i.e., when the civil suit was filed by Respondent no.1 herein before the Trial Court. It is therefore, apparent that from the conduct of the Petitioner that he is merely seeking to stall the proceedings pending before the Trial Court and not let the matter proceed. This Court finds that the present petition has not been filed in good faith and the present proceedings are being used to deny the Respondent No.1 mother, adjudication of her claim of partition of suit property.

11. In view of the aforesaid facts, this Court finds that no just cause has been made out for non-filing of the written statement even after passage of eleven (11) months. The time spent in drafting this petition could've been gainfully used in drafting the written statement instead. The plea of inability is therefore, no justified. The dates of the illness of the Petitioner's wife, his child and himself have been examined and even after accounting for the same, it would not justify a delay of eleven (11) months in not filing the written statement.

12. Accordingly, this Court finds no merit in the present petition and the same is dismissed. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 19, 2023/rk/aa