



\$~10 and 11

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

Date of decision: 15.12.2023

+ CM(M) 1549/2023 & CM APPL. 48981/2023

SARABPREET SINGH

..... Petitioner

Through: Mr. Rajat Aneja with Dr. R.S. Sasan,
Advocates

versus

ASHOK BABBAR & ORS.

..... Respondent

Through: Mr. Parneek K. Sharma and Mr.
Prashant Bajaj, Advocates

11

+ CM(M) 1551/2023 & CM APPL. 49044/2023

NANAK SINGH ALIAS AJEET SINGH

BHATIA

..... Petitioner

Through: Mr. Rajat Aneja with Dr. R.S. Sasan,
Advocates

versus

ASHOK BABBAR & ORS.

..... Respondent

Through: Mr. Parneek K. Sharma and Mr.
Prashant Bajaj, Advocates

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. These petition(s) impugn the common orders dated 06.02.2023 and 21.08.2023 passed by the ADJ-08, West District, Tis Hazari Courts, Delhi ('Trial Court') in civil suit bearing Civ. DJ. No. 656/2021, titled as '**Ashok**

**Babbar and Ors. v. Nanak Singh and Anr.’.**

2. The Trial Court vide order dated 06.02.2023, struck off the defences of the Petitioner(s) and subsequently, vide order 21.08.2023 dismissed the review application with costs of Rs. 50,000/-.

3. The Petitioner(s) in CM(M) 1549/2023 and CM(M) 1551/2023 are defendant no.1 and defendant no.2 respectively. The common Respondent Nos.1 to 3 in these petitions are plaintiff nos. 1, 2 and 3 respectively. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

4. The civil suit has been filed for recovery of possession, mesne profits, arrears of rent and permanent injunction.

5. At the outset, learned counsel for the defendant nos. 1 and 2 states that the costs imposed by the Trial Court vide order dated 21.08.2023 has been paid.

5.1. He states that the delay in filing the written statement be condoned and defendant no.1 remains bound by the statement made before this Court on 21.09.2023 to the effect that he adopts the written statement of defendant no.2, which is placed on record as Annexure P-5 in CM(M) 1549/2023.

5.2. He states that the defendant no.2 has no further documents to file, however, defendant no.1 has sent to the Trial Court, by post a letter along with the documents he wishes to rely upon. He states that defendant no.1 will move an appropriate application for bringing on record the said documents.

5.3. He states that the delay in filing the written statement be condoned and the defendant nos. 1 and 2 are willing to compensate the plaintiffs for the delay caused.



6. In reply, learned counsel for the plaintiffs state that the non-filing of the written statement despite service on 04.05.2022 is wilful and deliberate. He states that there is a delay of 124 days and the Trial Court has rightly rejected the application filed under Order VIII Rule 1 CPC.

6.1. He states that the procedure adopted by defendant no.1 of addressing letters to the Trial Court is a procedure unknown to law and the documents, if any, sent with the said letter do not form part of the Court's record. He states that the plaintiffs object to the veracity of the said documents and also dispute that the same form part of the Trial Court Record. He states that the said documents were not provided to the plaintiffs herein and they have no knowledge of the filing of the said documents.

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

8. The learned Single Judge of this Court in ***Randhir Singh v. Urvashi Suri***¹ 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,

¹ 2023 SCC OnLine Del 2644



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.

xxx

xxx

xxx

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)

9. Therefore, keeping in view the aforesaid position in law, the written statement of defendant nos. 1 and 2 is taken on record, subject to the compliance of the following terms:

- (i) The Petitioner(s) are directed to pay costs of Rs. 1,00,000/- to the Respondent(s) within four (4) weeks through a demand draft.
- (ii) The Petitioner(s) are directed to file their affidavit of admission/denial of documents filed with the plaint within a period of four (4) weeks.
- (iii) The aforesaid timeline will not be extended.
- (iv) Subject to the Petitioner(s) making the payments of costs and filing the affidavit of admission/denial, the Respondent(s) may file replication within a period of four (4) weeks thereafter.

10. Subject to the defendant nos. 1 and 2 complying with the terms (i) and (ii) set out hereinabove, the impugned order dated 06.02.2023 shall stand superseded. However, in case of default, the order dated 06.02.2023 shall remain in operation and bind the parties.

11. The defendant no.1 shall remain bound by the statement made before this Court on 21.09.2023 and the written statement filed as ‘Annexure P-5’



to CM(M) 1549/2023, will be treated as a common written statement of defendant nos. 1 and 2.

12. The defendant nos. 1 and 2 are at liberty to file an appropriate application to place on record the documents alleged to have been sent to the Trial Court vide letter dated 22.03.2023, however, the application shall be decided by the Trial Court in accordance with law.

13. It is made clear that this Court has not expressed any opinion on the admissibility of the said application.

14. The defendant nos. 1 and 2 have undertaken before this Court that they shall remain duly represented before the Trial Court and not seek any adjournment. The said statement is taken on record and they are bound down to the same.

15. In case, the Trial Court is of the opinion that the defendant nos. 1 and 2 are taking unnecessary adjournments, the Trial Court is requested to exercise its jurisdiction under Order XVII CPC.

16. With the aforesaid directions, the present petitions are disposed of. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 15, 2023/msh/aa

Click here to check corrigendum, if any