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

+ **CM(M) 32/2024**

USHA RANI AND ORS.

..... Petitioner

Through: Mr. Praveen Aggarwal and Mr.
Manish S., Advocates.

versus

SURESH SINGHAL

..... Respondent

Through: Mr. Naman Singhal and Ms. Bharati
Grover, Advocates.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

21.03.2024

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CM 17553/2024—amendment of petition

1. The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 20.07.2023 and 20.11.2023 passed by the learned Additional District Judge -04, (North-West), Rohini District Court, Delhi (hereinafter as “Trial Court”) in Suit bearing no. CS 42/2023 titled as “*Suresh Singhal vs Ajay Bansal & Ors.*” whereby the learned trial court closed the right of the petitioners to file the written statement in absence of adequate court fee paid with respect of filing the application of condonation of delay. Subsequently, in absence of petitioners/defendants and their main counsel, an application moved by them under Order XLVII Rule 5 Code of Civil Procedure, 1908 (“CPC”) was not heard and learned Trial Court proceeded under Order XVII CPC thereby



granting the respondent herein opportunity to lead evidence.

2. The petitioners herein are the defendants and the respondent is the plaintiff before the learned trial court in the captioned suit which is pending adjudication.

3. The procedural history of the case unfolds with the respondent instituting the present civil suit before the learned trial court on 16.01.2023 for recovery of Rs. 15,40,711 against the petitioners. Thereafter, the petitioners on 15.05.2023 filed an application under Section 151 CPC for supplying legible and complete copy of the plaint along with the documents and the same were supplied through WhatsApp during the course of the day by the counsel for respondent.

4. On 20.07.2023, the petitioners filed written statement along with an application seeking condonation of delay of 36 days and another application under Order VII Rule 11 of CPC. Vide the impugned order dated 20.07.2023, the learned trial court did not take the written statement on record keeping in view that both the applications filed by the petitioners were without adequate court fees and thus cannot be considered.

5. Subsequent thereto, the petitioners filed a review application under Order XLVII Rule 5 of CPC on 18.08.2023 seeking review of the order dated 20.07.2023, which was fixed for hearing for 17.10.2023. Thereafter, on the said date of hearing, the learned trial court heard arguments on the application and posted the matter for reply and arguments for 20.11.2023.

6. Vide the impugned order dated 20.11.2023, the learned trial court proceeded under Order XVII CPC since proxy counsel for the defendants had appeared sought for an adjournment, thus, the respondent was granted opportunity to lead evidence and consequently PW1 was examined and



discharged and the matter was posted for remaining evidence of the respondent/plaintiff for 12.02.2024.

7. Aggrieved by this, the petitioners have approached this court vide the present petition.

8. The learned counsel for the petitioners submits that the learned trial court did not give an opportunity to the petitioners to file the requisite court fees and the right to file written statement was wrongly closed on the first call itself. An application under Section 151 CPC was also filed for taking the requisite court fees on record on 20.07.2023, however the same was not heard and was deferred for the next date of hearing i.e. 17.10.2023. Immediately thereafter, the petitioners moved a fresh application under Section 151 for furnishing the requisite court fees which he earlier could not affix. However, the Learned Trial Court did not allow them to furnish the court fees and observed that the application seeking condonation of delay was already dismissed.

9. It is submitted that since the petitioners had preferred the present petition, therefore the application seeking review of the order dated 20.07.2023 was withdrawn before the learned trial court vide order dated 12.02.2024. The learned counsel submits that learned Trial Court has been inadvertently located the present suit as if it is a commercial suit but being a non-commercial suit, the provision of Order VIII Rule 1 of CPC are not mandatory but discretionary. Reliance placed on the judgement of the Hon'ble Supreme Court in ***Bharat Kalra vs Raj Kishan Chabra*** in Civil Appeal No. 3788/2022.

10. Conversely, the learned counsel for the respondent opposed the submissions made on behalf of the petitioners by submitting that apart from



contending that the petitioners were not diligent in filing the written statement, they had also been negligent in not furnishing the requisite court fees along with the application seeking condonation of delay. Accordingly, the learned trial court has rightly passed the impugned order which does not require any interference by this court.

11. The learned counsel for the respondent also brought to the notice of this court that there is another great defect in the present matter as the signatures on the petition and the application are visibly different and it would appear that they have not been filed by the same person.

12. Apart from submissions, impugned orders and record have also been perused.

13. The observation of the learned trial court in the impugned order dated 20.07.2023 reads as under:

“Written statement is filed on behalf of defendant alongwith one application seeking condonation of delay in filing of the same. Another application is filed on behalf of defendant under Order 7 Rule 11 CPC. The same is not with requisite court fees as such cannot be considered. The application seeking condonation of delay also does not have requisite court fees. Thus, the same also cannot be considered.

In the facts of the case where no written statement has been filed by the defendant within prescribed period, the written statement being filed today in the absence of any application seeking condonation of delay in filing the same showing the reasons under which the defendant could not file the written statement cannot be taken on file.”

14. Apparently, the Learned Trial Court had taken a hyper-technical view in the present matter. Even, if the application for condonation of delay was with deficit court fees, the learned trial court should have afforded a reasonable opportunity to the petitioners maybe for a day or so to file the requisite court fee. It is trite in law that the rules of procedure are the handmaids of justice and not its mistress and no party should suffer a wrong



by the technical procedure of irregularities.

15. In view of the above, the impugned orders are set aside subject to petitioners furnishing adequate court fees with respect to application for condonation of delay. The case is remanded back to hear the arguments on the next date of hearing before the learned trial court and to decide the application afresh within 1 week after hearing the arguments.

16. Resultantly, the impugned order dated 20.11.2023 also stands set aside. In view of the aforesaid directions, the present petition, along with pending application, if any, thus stands disposed of.

17. It is needless to state that the observations made herein shall not tantamount to be an observation on the merits of the case before the learned Trial Court.

SHALINDER KAUR, J.

MARCH 21, 2024/ab