



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

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Judgment reserved on: 29.01.2024
Judgment pronounced on: 10.04.2024

+ CM(M) 143/2023, CM APPL. 4282/2023--stay
JITENDER KUMAR KUSHWAHA Petitioner
Through: Mr. Deepak Agarwal and Mr. Vinay
Kumar, Advs.

versus

ALBERT JOSEPH & ANR. Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition assails the impugned orders dated 28.09.2022 & 01.12.2022 passed by Learned Additional District Judge -04, North-West, Rohini Courts, Delhi (hereinafter as "Trial Court") in CS DJ No. 514 of 2022 titled as "*Albert Joseph vs Jitender Kumar Kushwaha & Anr.*" whereby the learned trial court did not take on record the written statement of the petitioner herein in absence of any application for condonation of delay and subsequently, after filing the application for condonation of delay under Section 5 of limitation Act along with an application under Order VIII Rule 1 read with Section 151 CPC, the same were dismissed thereafter. The petitioner herein is the defendant no. 1 before the learned trial court.

2. Facts in crux are that in 2022, the respondent no. 1 had filed the present civil suit before the learned trial court for declaration, permanent &



mandatory injunction against the petitioner and respondent no. 2 with respect to property i.e. F-40/2, in Khasra No. 23/3/1, Pansali Village, Delhi (Locality now known as Deep Vihar, Delhi 110042) inter alia, from dispossessing the petitioner and respondent no. 2 (“defendants”) and further for returning the eight cheques issued by respondent no. 1 in the controversy therein, specifics of which are not relevant for adjudication of the present petition.

3. Thereafter, the summons of the suit were issued to the defendants therein vide order dated 08.06.2022. Subsequently, the petitioner entered appearance and was granted, upon request, 30 days time to file the written statement by the learned Trial Court vide order dated 06.02.2022.

4. However, it is the petitioner’s case that the last day prescribed for filing the written statement was 07.08.2022 being Sunday. The draft of which was prepared before that, however, attestation to the affidavit could be done only on 08.08.2022. Hence, the written statement could not be filed on that day. Further, keeping in view that there were court holidays from 09.08.2022 till 11.08.2022, the written statement was filed on 12.08.2022 with a delay of five days.

5. Thereafter, the matter came up for hearing on 28.09.2022 whereby the learned trial court did not allow for the written statement to be taken on record in absence of any application seeking condonation of delay in filing the written statement or seeking extension of time in filing the said written statement.



6. Unsettled by the striking off the written statement from the record, the petitioner on 01.12.2022 filed two applications, one under Order VIII Rule 1 read with Section 151 CPC and another under Section 5 of Limitation Act seeking condonation of delay in filing the written statement. The Learned trial court dismissed both the applications vide its impugned order dated 01.12.2022.

7. Thus, the petitioner has preferred the present petition before this court.

Submissions of the parties

8. The learned counsel for the petitioner submitted that the learned trial court erred in passing the impugned order without calling for any reply from the respondent no. 1 herein and dismissed both the applications.

9. The learned counsel for the petitioner submitted that the learned trial court erred without appreciating proper facts that the petitioner was in a judicial custody at the relevant time.

10. The learned counsel submitted that the learned trial court erred in ignoring the law laid down by the Hon'ble Supreme Court whereby it was held that provision of Order VIII Rule 1 CPC is merely procedural in nature and is not part of substantive law. Reliance placed on *Kailash vs Nanhku & Ors*, *Rani Kusum vs Kanchan Devi & Ors* (2005) 4 SCC 480 and *Bharat Kalra vs Raj Kishan Chabra* in Civil Appeal No. 3788 of 2022 decided on 09.05.2022.



11. Concluding the arguments, the learned counsel for the petitioner submitted that the learned trial court erred in appreciating that the suit is at the initial stage and no prejudice will be caused in case the written statement is allowed to be taken on record and the matter is decided on merits. Moreso, when neither of the parties have filed their affidavit of evidence and neither the issues have been framed in the suit.

12. Refuting the submissions of the petitioner, the learned counsel for the respondent no. 1 submitted that the learned trial court rightly closed the right of the petitioner to file written statement on the ground that the petitioner has not disclosed any reasonable grounds for condonation of delay in filing the written statement.

13. The learned counsel submitted that it was not necessary for the learned trial court to call for a reply on both the applications as the counsel for the respondent no. 1 was ready to argue the matter directly on both the applications and after hearing the arguments from both the sides, the learned trial court passed the impugned order striking off the written statement from the record.

14. The learned counsel for the respondent submitted that the issue of judicial custody of the petitioner was never disclosed before the learned trial court by the petitioner in his application. Further, the judgments relied on by the petitioner are not applicable to the facts and circumstances of the present case and the petitioner cannot be permitted to file the written statement at this stage.



Analysis and conclusion

15. Submissions heard, record as well as impugned orders have been perused. It is observed from the record that the learned Trial Court vide order dated 08.06.2022 had issued summons to the petitioner herein for 06.07.2022. On the said date of hearing, the petitioner entered appearance and requested for time to file the written statement, acceding to the request, the learned Trial Court granted 30 days time to the petitioner to file the written statement in the suit.

16. Notably, the time limit granted by the learned Trial Court to the petitioner to file written statement expired on 04.08.2022, being the 30th day, however, the petitioner filed his written statement on 12.08.2022 with a delay of eight days. Moreso, without an application seeking condonation of delay explaining the reasons caused for such delay. Thereafter, the learned Trial Court vide order dated 28.09.2022 took the written statement off the record.

17. Subsequently, the petitioner filed two applications before the learned Trial Court, one under Order VIII Rule 1 read with Section 151 CPC and another under Section 5 of Limitation Act seeking condonation of delay in filing the written statement, the same were dismissed by the learned Trial Court vide order dated 01.12.2022.

18. This Court finds no merits in the arguments put forth by the learned counsel for the petitioner that the last day prescribed for filing of written statement was 07.08.2022 i.e. Sunday whereas, the last day was actually



04.08.2022 i.e. Thursday and it is for the first time, the argument was raised before this Court that the petitioner was in judicial custody, however, he has not shown when he was in the judicial custody. The fact relating to judicial custody was also never brought to the notice of the learned Trial Court. Had that been so, the learned Trial Court would have directed the petitioner to file written statement through jail superintendent.

19. The position of law is well settled and is no longer *res-integra* as held by the Hon'ble Supreme Court in catena of judgments that in non-commercial suits, the time limit for filing the written statement is only directory and not mandatory. Furthermore, it is trite in law that the rules of procedure are handmaid of justice and the Court should aim to do substantial justice in a given matter, provided that the other party can be well compensated in terms of order of cost.

20. Thus, in view of the aforesaid discussion and in the peculiar facts of this case, the written statement is allowed to be taken on record, subject to cost of Rs. 5,000/- to be paid to the respondent no. 1 before the learned Trial Court on the next date of hearing. Consequently, the present petition along with pending application, stands disposed of.

SHALINDER KAUR, J.

APRIL 10, 2024/ss