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

+ CM(M) 2004/2024, CM APPL. 12640/2024--stay

MAHESH KUMAR & ORS.

..... Petitioners

Through: Ms. Mansi Sood and Mr. Vinayak
Mehrotra, Advocates.

versus

BEENA DEVI

..... Respondent

Through: Mr. Ishan Sanghi, Advocate.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

03.04.2024

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1. The present petition has been filed invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India to challenge the order dated 13.09.2022 passed by the Learned Civil Judge (CJ-01), Patiala House Courts, New Delhi in CS SCJ No. 413/2020 titled as "*Beena Devi vs Mahesh Kumar &Ors*" whereby the learned trial court dismissed the application filed by the petitioners herein under Order XI Rule 7 of the Code of Civil Procedure, 1908 ("CPC") seeking vacation of order dated 30.10.2021 vide which the defence of petitioners was struck off. The petitioners herein are the defendants before the learned trial court in the captioned suit.

2. The recital of facts starts with respondent filing the present suit on 10.09.2020, for mandatory and permanent injunction and other reliefs against the petitioners with respect to suit property i.e. Jhuggi No. 38/90, JJ Colony, Inderpuri, Delhi.



3. Upon being served with the summons, the petitioner no. 1 and 2 appeared before the Learned Trial Court in person on 08.12.2020. However, the copy of the plaint along with documents was not served upon petitioner no. 1 and 2 and the learned trial court directed the respondent no.1 to supply the same. Thereafter, the petitioners also approached the New Delhi legal Services Authority seeking a legal aid counsel and accordingly were assigned a legal aid counsel to represent them in the present matter.
4. The physical copy of the plaint and other documents were supplied to the counsel for petitioners in the court before the learned trial court on 25.02.2021 and matter was posted for filing of the written statement on 05.05.2021.
5. The counsel for the petitioners did not appear before the learned trial court on 09.09.2021. thereafter, on the next date of hearing, the counsel for the petitioners again did not appear and since no written statement was filed, the learned trial court closed the petitioners' right to file written statement vide order dated 30.10.2021.
6. In the meanwhile, there was a change of counsel and the legal Aid Counsel appointed on behalf of the petitioners entered appearance on 05.01.2022 before the learned trial court.
7. Further, on the dates of hearing 26.02.2022 and 02.04.2022, the counsel for the petitioners did not appear before the learned trial Court.
8. The counsel for the petitioner again failed to appear before the learned trial court. Subsequently, they were proceeded ex-parte vide order dated 21.05.2022.
9. Upon being apprised of the aforesaid orders, the petitioners filed application under Order IX Rule 7 of CPC on 29.08.2022 praying for the



orders to be set aside.

10. After passing of the impugned order, the petitioners moved an application under Order VII Rule 11 of CPC, reply thereto was filed by the respondent. The learned trial court also dismissed the aforesaid application in view of absence of the counsel for the petitioners.

11. Thereafter, the empanelment of the counsel for petitioners came to an end and therefore the petitioners again approached the New Delhi District Legal Services Authority for appointment of fresh legal aid counsel. A new counsel was then appointed for the petitioner/defendant no. 3 before the learned trial court and thus the present counsel for the petitioners filed fresh *Vakalatnama* and sought one opportunity to peruse the file and to take appropriate steps. Thereafter, the present legal aid counsel filed the present petition before this court.

12. The learned counsel for the petitioners submits that the petitioners herein are extremely poor and illiterate thus they solely relied upon their counsel for guidance with respect to proceedings in the suit. Further that they were unaware of the order of the learned trial court striking off the defence of the petitioners whereas the erstwhile counsel informed them that the matter was proceeding smoothly.

13. The learned counsel submits that the failure to file written statement and to attend the case was on account of Covid Pandemic, period which is well covered by the Hon'ble Supreme Court decision in ***Re: Cognizance for extension of limitation Suo Moto Writ Petition (Civil) No. 03/2020*** from period 15.03.2020 to 28.02.2022 and since the suit was filed after 15.03.2020, the petitioners' right to file their written statement was closed on 31.10.2021, thus, there was no question of delay in filing the same.



14. Further, in view of aforesaid, the petitioner ought to have been permitted to place their written statement on record. It was also submitted before the learned trial court regarding the inability of the counsel to file the written statement was on account of expiration of empanelment of the legal aid counsel in the present case.

15. The learned counsel submits that the act of the petitioners was neither deliberate nor intentional and therefore the petitioners be granted one last opportunity to file the written statement to defend their case.

16. Learned counsel further submits that on bare perusal of the impugned order, it would appear that the same has been passed without application of mind and without considering the totality of facts and circumstances. Further submits that the matter is now listed for ex-parte final arguments on 20.04.2024.

17. The submissions have been vehemently controverted by the learned counsel for the respondent submitting that the counsel for petitioners waited for an entire year to challenge the order passed back in September, 2023.

18. Learned counsel also submits that the intention of the petitioners is only to delay the proceedings in the suit filed by the respondent and there is no merit in the petition. The learned Trial Court after considering the entire factual background has passed the order dated 13.09.2022 which does not require any interference.

19. The issue with respect to whether written statement, in case of a non-commercial suits, is mandatory to be filed or is directory was considered by the Hon'ble Supreme Court in the case of **Kailash v. Nanhku** [(2005) 4 SCC 480] The relevant paragraphs are reproduced hereinbelow:-



“27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar are pertinent: (SCC p. 777, paras 5-6)

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The procedural law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence - procedural, as much as substantive."

46.

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and



not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

20. It is a matter common knowledge that during the Covid Pandemic period, the courts were functioning through Hybrid mode/video conferencing/physically and in between were also functioning normally considering the Covid situation. Further, during the Covid Pandemic, even when the courts started functioning for some period of time, only the urgent matters were taken up for hearing.

21. It was also very evident that the repercussions from the Covid Pandemic were grave and that the people suffered hardships during and after



the Covid period. The country also went through two complete lockdown periods. Taking note of such a situation, the Hon'ble Supreme Court vide the judgment titled "*Suo Moto Writ Petition (c) No.3 of 2020 In Re: Cognizance for Extension of Limitation*", the period of limitation with respect to every kind of limitation was extended w.e.f. 15.03.2020 to 28.02.2022.

22. It is pertinent to note that the petitioners are extremely poor and illiterate persons who were solely dependent upon the advice of their counsel. Furthermore, the advocates from legal aid were appearing from both the sides.

23. Furthermore, it is also significant to consider that the defence of the petitioners was struck off on 30.10.2021 during the Covid period and the petitioners have also taken a plea that legal aid counsel could not appear before the learned Trial Court as the empanelment/tenure of legal aid counsel appointed on behalf of the petitioners was over.

24. Having considered the aforesaid and in the interest of justice, the impugned order dated 13.09.2022 is set aside. The petitioners to file their written statement(s) within 2 weeks from today, subject to cost of Rs. 2,000/- to be paid to the respondent.

25. Accordingly, the present petition along with pending application stands disposed of.

SHALINDER KAUR, J.

APRIL 03, 2024
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