



2024:DHC:3117



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

% *Judgment reserved on: 08.02.2024*
Judgment pronounced on: 22.04.2024

+ CM(M) 521/2023 and CM APPL. 15522/2023—stay

PUSHPA

..... Petitioner

Through: Mr. Ishan Sanghi, Ms. Poorvashi
Kalra, Adv. M. 9999712309

versus

POONAM GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. A short controversy arising from the present petition pertains to the dismissal of an application filed by the petitioner seeking condonation of delay in filing of the written statement, thereby striking off her right to defence, vide impugned order dated 19.01.2023 passed by learned Senior Civil Judge-cum-Rent Controller, West District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court') in CS SCJ 552/2022 titled as '*Poonam Gupta vs. Pushpa*'. Aggrieved by passing of the impugned order, the petitioner has taken the recourse of law by filing the present petition under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court.



2. The factual matrix in brief is that the respondent being the owner of the First floor with the roof/terrace right being part of the built-up property bearing No.C-172, a land area measuring 25 sq. yds. situated in the Abadi of Raghbir Nagar, New Delhi-110027 (hereinafter referred to as 'subject property') had rented out the subject property to the petitioner with a fixed monthly rental of Rs.6,000/- since April, 2016. Thereafter, three rent agreements were executed between the parties, however, due to onset of the covid pandemic, rent agreements were not executed after 30.05.2020.

3. In October 2021, the respondent requested the petitioner to vacate the subject property. However, to avoid eviction, the petitioner filed a suit for permanent injunction bearing CS/SCJ No.1403/2021 against the respondent which came to be dismissed vide order dated 23.11.2021. An appeal bearing RCA No.15/2021 was filed by the petitioner against the said order and adjudication of which is stated to be currently pending.

4. After serving legal notice dated 28.01.2022 on the petitioner directing her to vacate the subject property, the respondent filed the present suit before the learned Trial Court for possession, damages, recovery of arrears of rent and permanent injunction against the petitioner. Subsequent thereto, summons of settlement of issues in the suit was served on the petitioner on 06.05.2022. On the first date of hearing before the learned Trial Court being 09.06.2022, the daughter of the petitioner appeared in the suit and informed the Court that her mother was out of station as a relative was suffering from a medical ailment. Therefore, she requested time to file written statement with appropriate application. The learned Trial Court, accordingly, adjourned the case for 08.09.2022. The petitioner came back to Delhi due to



her younger son's hospitalization and daughter-in-law's illness which prevented her from engaging a counsel in the matter until 01.09.2022. Thereafter, the petitioner engaged a counsel and filed her written statement along with application seeking condonation of delay on 08.09.2022. Subsequently, the impugned order by the learned Trial Court came to be passed whereby the application seeking condonation of delay in filing the written statement was dismissed.

5. Being dissatisfied by the impugned order, the petitioner has approached this Court.

6. Pertinently, the respondent was served with the notice of the present petition on 13.06.2023 but she neither appeared before this Court on 08.02.2024 nor has filed any reply to the petition. Moreso, no written submissions have been filed on behalf of respondent.

7. Learned counsel for the petitioner submitted that the learned Trial Court while passing the impugned order overlooked the written statement which was filed along with the application seeking condonation of delay thereby failing to consider the medical documents justifying the delay. The learned counsel further submitted that the delay in filing the written statement can be well compensated with cost but denying the benefit of filing of the written statement will cause grave prejudice to the petitioner.

8. The learned counsel submitted that reckoning the period of 30 days from 06.05.2022, the delay would not be more than 95 days and the actual delay beyond the extended period of 120 days would only be to the extent of 5 days in filing the written statement before the learned Trial Court for which valid ground has been put up by petitioner.



9. Learned counsel placed reliance on the judgment of the Supreme Court in the case of ***“Bharat Kalra vs. Raj Kumar Chabra”*** SLP No.63/2022 submitting that the present suit is a non commercial suit and the law has been settled that the time limit for filing the written statement under Order VIII Rule 1 CPC is not mandatory but only directory.

10. It was also submitted that the learned Trial Court did not decide application under Order VII Rule 11 CPC filed by the petitioner which had to be decided first before proceeding with the trial. Reliance was further placed on the judgment in the case of ***Salim Bhai & Ors. vs. State of Maharashtra & Ors. (2003) 1 SCC 557.***

11. Finally, the learned counsel submitted that irreparable loss shall be caused to the petitioner if the written statement is not allowed to be taken on record before the learned Trial Court. Therefore, in view of the same, the impugned order be set aside.

12. Submissions considered, the record including the impugned order as well as the application seeking condonation of delay in filing the written statement are perused.

13. The impugned order discloses that before the learned Trial Court, the respondent had raised objection to filing of the written statement on 08.09.2022 and contended that the petitioner has deliberately delayed the matter. Moreso, no supporting document was placed on record by the petitioner to support the grounds as mentioned in the application seeking condonation of delay. The learned Trial Court not being convinced with the grounds mentioned in the application seeking condonation of delay, dismissed the same by observing *“no reasonable ground supported by any*



document is placed on record and accordingly, struck off the defence of the petitioner”.

14. Be it noted that there is a clear distinction in protocol between commercial suits and non-commercial suits. The commercial suits follow a distinct procedure than the non-commercial suits, which is more rigorous as in the case of non-commercial suits. In the present case, it is not disputed that on the very first date of hearing, the daughter of the petitioner had appeared and apprised the Court that her mother was out of station and thereby sought time to file appropriate application along with written statement. Insofar, the application seeking condonation of delay in filing the written statement is concerned, the petitioner has submitted that in the month of May, the petitioner had gone to her native place, Dehradun, Uttarakhand to look after her sister-in-law who was suffering from medical ailments and nobody else was in the family to look after her. She came back to Delhi on 19.06.2022. However, her younger son was seriously ill and admitted in hospital. During this time, her daughter-in-law also suffered physiological problem and due to said reasons, the petitioner could not engage a counsel in time and failed to file the written statement as per the stipulated time under the law. The written statement thus came to be filed on 08.09.2022.

15. Needless to say, the reasons for delay have not been considered by the learned Trial Court and have been simply brushed aside by mentioning that the grounds are not reasonable and not supported by documents. From the record, it is not clear whether any opportunity was afforded to the petitioner to furnish documents. However, the application of the petitioner is supported



with her affidavit. Moreso, an important fact cannot be overlooked that on the first appearance before the learned Trial Court, the daughter of petitioner had appeared and assigned the same reasons for non appearance of her mother. Therefore, the explanation given by petitioner is sufficient to condone the delay of 05 days in not filing the written statement. Nonetheless, the respondent can be compensated by way of cost for prolonging the Trial.

16. In view of above, the impugned order dated 19.01.2023 is set aside subject to cost of Rs.10,000/- to be paid by the petitioner to the respondent before the learned Trial Court on the next date of hearing. The written statement is allowed to be taken on record.

17. Consequently, the petition is allowed and disposed of.

SHALINDER KAUR, J.

APRIL 22, 2024
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