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

+ **FAO(OS) 58/2023**

LOVELY PAL AND ANR

..... Appellants

Through: Mr. S.P. Yadav, Advocate with
Appellants in person

versus

HONEY CHANDEL HONI PAL & ORS.

..... Respondents

Through: Mr. Varun Kumar, Advocates for R-1
and 2
Mr. R.P. Tamar, Advocate for R-3

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Date of Decision: 11th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

1. The present appeal has been filed impugning the Order dated 27.03.2023 passed in O.A. No. 31/2023 in C.S. (O.S.) 81/2020 ('civil suit') whereby the learned Single Judge has dismissed the said appeal and upheld the order dated 07.09.2022 passed by the learned Joint Registrar of this Court, wherein the Appellants right to file the written statement was closed.

1.1. The Appellants are original defendant nos. 1 and 2, Respondent No. 3 is the original defendant no. 3 and Respondent nos. 1 and 2 are the original plaintiffs in the civil suit.

1.2. The Appellants are the brothers of the Respondent nos. 1 to 3. The civil suit has been filed by the Respondent Nos. 1 and 2 seeking a decree of partition of the property bearing Khasra no. 35 situated in the area of the



village Ghondli, Near Seelampur, Illaqa Shahdara, Delhi now known as X-3782, Gali No. 9, Shanti Mohalla, Raghuwar Pura.- II, Gandhi Nagar, Delhi etc by metes and bounds ('suit property') and seeking directions to Appellants to render the accounts of all the rent received from the four (4) rented shops of the suit property.

1.3. In the said civil suit, Appellants were served by way of ordinary mode on 30.10.2021. The Appellants entered appearance on 07.12.2021; however, they failed to file their written statement till 07.09.2022. In these circumstances, Joint Registrar of this Court vide order dated 07.09.2022, closed the rights of the Appellants to file written statement.

1.4. Thereafter, Appellants preferred a Chamber Appeal under Chapter II Rule 5 of Delhi High Court (Original Side) Rules 2018 bearing O.A. No. 31/2023 assailing the said order dated 07.09.2022 of the Joint Registrar along with an application being I.A. 5962/2023 seeking condonation of delay of 175 days in filing the above Chamber Appeal. However, the same has been dismissed by learned Single Judge vide impugned order dated 27.03.2023. Hence, the present appeal has been preferred by the Appellants herein.

2. The learned counsel for the Appellants states that the delay in filing of the written statement was on account of prolonged negotiations and settlement talks with the Respondent nos.1 and 2. He states that after the settlement talks failed, Appellant No. 2 suffered medical issues such as depression and was unable to instruct the counsel to draft the written statement.

2.1 He states that the procedural requirement of filing the written statement within a stipulated period would not be applicable to a suit for



partition. He states that a lenient view be taken in the facts of the present case due to the medical issues faced by the Appellant No. 2.

3. In reply, learned counsel for Respondents states that the plea of settlement talks is incorrect. He states that it is a matter of record that while the Appellants (despite service of summons on 30.10.2021) elected not to file the written statement, they filed two police complaints on 17.07.2022 and 20.07.2022 against the Respondents. He states that the said action of the Appellants belies their contention that Appellant No. 2 was unwell or the parties were exploring settlement. He states that the Appellants have deliberately not filed the written statement within the stipulated time so as to protract the suit proceedings as they are enjoying the rental income from the suit property.

4. This Court has considered the submissions of the counsel for the parties and perused the record.

5. The Appellants were admittedly duly served with the summons in the suit on 30.10.2021. The Appellants entered appearance on 07.12.2021; however, they failed to file their written statement within the statutory period without any cause and therefore, the learned Joint Registrar vide order dated 07.09.2022 closed the right of the Appellants to file the written statement.

6. The Appellants remained unperturbed by the closing of the said right to file written statement and thereafter belatedly on 08.03.2023 filed a Chamber Appeal under Rule 5 of Delhi High Court (Original Side) Rules 2018 before the learned Single Judge impugning the order dated 07.09.2022. The said Chamber Appeal was also filed beyond the statutory period of limitation and was therefore accompanied by an application bearing I.A.



5962/2023 seeking condonation of delay of 175 days. The said Chamber Appeal has been dismissed by the learned Single Judge by the impugned order dated 27.03.2023, relevant portion whereof reads as under:

“6. As far as the plea of parties exploring possibility of settlement is concerned, I again find this plea to be an afterthought. The summons in the suit was served on the defendant nos.1 and 2 on 30.10.2021. Till the passing of the impugned order, that is, 07.09.2022, the written statement had not been filed by the said defendants. The plea that some settlement talks were going on between the parties is not only strongly refuted by the learned counsel for the plaintiffs and by the defendant no.3 but is also refuted by the own documents of the defendants, that is, copies of the police complaints dated 17.07.2022 and 20.07.2022 filed by the appellants/applicants with the present appeal/application. If the appellants/applicants were filing police complaints against the plaintiffs, surely the parties were not negotiating for a settlement. Further, if police complaints can be filed, there is no reason why the applicants/appellants would not file their written statement at least after filing the police complaints.

7. The plea of the defendant nos.1 and 2 that the defendant no.2 was the one who was to instruct the counsel and due to his ill-health, the written statement could not be filed, is also not acceptable as the medical documents filed in support of such plea are of a date post the passing of the impugned order.

8. There is also a delay of 175 days in filing of the appeal itself. This shows that the defendant nos.1 and 2 have been more than lax in defending the present suit.

*9. The learned counsel for the defendant nos.1 and 2 has placed reliance on the judgment of this Court in **Dr.Sukhdev Singh Gambhir v. Amrit Pal Singh & Ors., 2003 SCC OnLine Del 430**, to contend that in a suit for partition concerning the family members, endeavour should be made for the parties to arrive at an amicable settlement and, therefore, the delay in filing the written statement deserves to be condoned. However, in my opinion the said judgment also cannot come to the aid of the applicant/appellants. As noted hereinabove, from the conduct of the defendant nos.1 and 2 itself, it is evident that no effort of arriving at a settlement was being made by them. The said judgment would, therefore, not be applicable to the facts of the present case.”*

(Emphasis supplied)

7. In the aforesaid facts, it is admitted that though the Appellants have been duly served with the summons on 30.10.2021, they have till date (i.e., for two years) not filed their written statement.



8. The Appellants have not disputed that they filed the police complaints against Respondents on 17.07.2022 and 20.07.2022; however, during the course of arguments, it is stated that the filing of the complaints was convenient as the police station adjoins the suit property, whereas, filing of the written statement was cumbersome. The act of the Appellants in filing the police complaints after service of summons, while failing to file the written statement within the statutory period is not *bona fide*. The said act of the Appellants belies their stand that they were not in a position to instruct their counsel to draft the written statement.

9. The learned Single Judge has rightly observed that the medical documents of Appellant No. 2 placed on record to justify non-filing of the written statement are all dated after the order has been passed by learned Joint Registrar on 07.09.2022. So also, the learned Single Judge has rightly observed that the Appellants negligent conduct in failing to file written statement between 30.10.2021 until 07.09.2022 (before the Joint Registrar) and the unusual delay of 175 days in filing the Chamber Appeal on 13.03.2023 are all indicative of the wilful default in filing the written statement. The Appellants are unable to point out any error in the said findings.

10. The Supreme Court in the case titled as **Kailash v. Nanku**, reported in (2005) 4 SCC 480 has clearly stated that the prayer of the defendant seeking time beyond 90 days for filing the written statement has to be granted by way of an exception. In the said judgment the Court held that extension cannot be granted to a defendant which has been lax or grossly negligent. The relevant portion of the judgment reads as under:

“43. A prayer seeking time beyond 90 days for filing the written statement



ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

(‘Emphasis Supplied’)

11. In the facts of this case, the learned Single Judge has returned a categorical finding that the defendants/appellants have been lax in defending the present suit and this Court finds no error in the said finding.
12. With the aforesaid observations, this petition completely devoid of merit and is accordingly dismissed.
13. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 11, 2024/hp/ms

Click here to check corrigendum, if any