



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

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Judgment reserved on: 15.04.2024
Judgment pronounced on: 22.04.2024

+ CM(M) 2337/2024, CM APPL. 21839/2024—stay

JATAV SUDHAR SAMITI & ANR. Petitioners

Through: Mr. Jugal Bagga, Ms. Yogita Sunaria,
Mr. Chet Ram Kaushik, Mr. Ritwik
Sharma, Mr. Charan Khatana, Advts.

versus

SUSHMA MITTAL Respondent

Through: Mr. Pawan Kumar Mittal, Adv.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition under Article 227 of the Constitution of India impugns the order dated 13.02.2024 passed by the learned District Judge, Commercial Court-05, South East District, Saket Courts, New Delhi in CS (COMM) No.289 of 2022 titled as “*Sushma Mittal vs Jatav Sudhar Samiti*”. The petitioners herein are the defendants and the respondent herein is the plaintiff before the learned Trial Court.

2. A brief history of facts leading to the present petition are that the petitioner no. 1 herein is a registered society, registered with the Registrar of Firms and Societies, Delhi. The husband of the respondent is the proprietor of M/s Rajasthan Sales corporation, carrying out his business in shop no.6 &



7 of property no.1865/1, Ravi Das Basti, Kotla Mubarak Pur, Delhi-110003. The respondent is an old tenant in the aforementioned shops, who had been paying rent at Rs.220/- per month.

3. It is the case of the petitioners that the husband of the respondent herein had not paid the rent to the petitioner society since January, 2015. The petitioners approached the respondent and demanded that rent as well as arrears due from January 2015 be paid, however the respondent failed to do so, compelling the petitioners to send a legal notices dated 04.02.2021 and 04.05.2021 thereby terminating the tenancy. The petitioners then went on to file a petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 titled as "*Jatav Sudhar Samiti vs Mangal Sain*" vide CS No.24-25/2021, which is currently at the stage of evidence.

4. Controverting the same, the wife of the respondent filed a suit for specific performance and injunction vide CS (COMM) No.289/2022 titled as "*Sushma Mittal vs Jatav Sudhar Samiti*" against the petitioners. Summons of the suit were issued on 23.08.2022 and served upon the petitioners on 03.09.2022, however, as a few documents supplied to the petitioners were not legible, the petitioners filed an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") on 01.10.2022, seeking directions in this regard.

5. That as a cautious measure, the petitioners herein filed their written statement along with an application under Order VIII Rule 1 read with Section 151 of the CPC, to extend the time to file a written statement on 28.02.2023. The matter was thereafter adjourned on various dates from 28.02.2023 to 03.01.2024 and on 13.02.2024, the learned Trial Court vide



impugned order dismissed the application filed by the petitioners while mentioning that there was no categorical averments as to what documents were not legible and that the written statement filed by the petitioners has been filed beyond 120 days. Aggrieved by the order of the learned Trial Court, the petitioners have approached this Court, invoking its supervisory jurisdiction.

6. Mr. Jugal Bagga, the learned counsel for the petitioners submits that the learned Trial Court has committed a grave miscarriage of justice as the service effected upon the petitioners on 03.09.2022 cannot be considered effective as certain documents supplied to the petitioners were not legible. Further, the petitioners had moved an application under Section 151 of the CPC on 01.10.2022, seeking necessary directions to the respondent to supply legible copies of the documents earlier furnished, which the respondent failed to do.

7. The learned counsel submits that the petitioners had filed the written statement without prejudice to their rights to file an additional written statement, as and when legible copies of the said documents were provided to them. The application filed by the petitioners was kept pending on various dates and the learned Trial Court dismissed the application without considering the contentions raised by the petitioners.

8. The contention of the petitioners is that non-supply of legible copies is a valid ground for extending the time for filing the written statement which has also been held by the learned Single Judge of this Court in **Manoj Kumar vs. Municipal Corporation of Delhi** [2023 SCC OnLine Del 1330] that the time period as stipulated under Order VIII Rule 1 CPC and as



amended by Commercial Courts Act, 2015 would commence only after the legible copies are supplied to the defendant.

9. Contradictorily, Mr. Pawan Kumar Mittal, learned counsel for the respondent submits that the learned Trial Court has committed no error in passing the impugned order. It is submitted that the application filed on behalf of the petitioners seeking legible copies of the documents was vague as it did not specify which documents were illegible. Further, the petitioners did not try and contact the respondent or her counsel and ask for copies of the said documents. The written statement has been filed after a period of 140 days, a delay that cannot be condoned in any circumstance.

10. In this respect, it is necessary to highlight, Order VIII Rule 1 of the CPC stipulates thirty days from the date of service of memorandum of summons of the suit as the time within which the written statement may be filed. It is important to note the Proviso to Order VIII Rule 1 of the CPC, as substituted by Commercial Courts Act, 2015, which reads as under:-

“1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

11. Thus, it is clear from the above provision that while the normal period for filing a written statement in answer to the suit would be 30 days from the date of service of summons, the said period may be further extended to 90 days, subject to reasons to be recorded in writing by the court. To ascertain the reasons, the defendant would be required to seek



condonation of delay in not filing the written statement within 30 days from the date of service.

12. Most importantly, the court has no power qua commercial suits to further extend time beyond 120 days from the date of service of summons.

13. In light of the above, the issue of filing of a delayed written statement is to be considered. It is not disputed that written statement is filed by the petitioners is beyond 120 days. The petitioners have been served on 03.09.2022 and written statement is filed on 28.02.2023 that is after 56 days beyond 120 days.

14. The petitioners are banking upon the application moved by them under Section 151 of the CPC on 01.10.2022 to aver that since the legible copies were not provided, therefore, the written statement could not be filed within the stipulated time as provided by law and the time is to be counted from the date when the legible copies were furnished.

15. Undisputedly, the petitioners had moved an application under Section 151 of the CPC dated 15.09.2022 before the learned Trial Court in which it is averred that **some of the documents of the plaint which were supplied by the plaintiff are not legible**. Due to this fact, the defendant nos. 1 and 2 were not in a position to file written statement in the abovementioned matter. The petitioners thereafter had requested the learned Trial Court to direct the plaintiff to supply legible documents to the petitioners to enable them to file their written statement in the matter.

16. To the contrary, the respondent denied that the petitioners were served with incomplete documents or the same was not legible and had filed a detailed reply. According to the respondent, the contentions of the



petitioners are false, incorrect and which were duly denied by her. It is further averred that along with summons of the suit, the plaint and entire set of documents were supplied/served upon the petitioners. It is also averred that no details of the documents which were illegible were provided in the application. Moreso, on 01.10.2022 when the matter was listed before the learned Trial Court, the Presiding Officer was on leave and no copy of the application under Section 151 of the CPC was provided to the respondent. Further soon after service of summons or any time thereafter, the petitioners never raised objection regarding illegible copies of the documents by writing an email or communicating to the respondent or her counsel despite the email address of the counsel for the respondent was duly mentioned in the suit.

17. A perusal of the orders of the learned Trial Court reveals that on 23.08.2022, the summons of the suit were issued and it was specifically directed that summons to defendant shall indicate that the written statement to the plaint shall be positively filed within the stipulated period from the date of receipt of summons. On 01.10.2022, which was the next date of hearing before the learned Trial Court, the learned Presiding Officer was on leave. An application was filed on behalf of the petitioners under Section 151 CPC and the learned counsel had undertaken to supply a copy of the application to the learned counsel for the respondent. The matter was listed on 06.12.2022, on which date again the learned Presiding Officer was on leave.

18. Finally on 28.02.2023, the written statement was filed on behalf of the petitioners. The respondent had vehemently opposed the filing of the



written statement at a belated stage. The learned counsel for the petitioners submitted that he had moved an application under Section 151 CPC for supply of complete legible documents along with the plaint. Pertinently, from the application, it cannot be ascertained which of the documents were illegible.

19. The position of law has been well settled that beyond 120 days, the court shall not allow the written statement to be taken on record as no further extension of time can be granted, consequentially, the defendant forfeits her right to file written statement. Though the petitioners had taken the plea regarding documents being illegible, however, have not specified and identified the documents which were not legible due to which, it would not have been possible for the petitioners to file the written statement. The application moved on behalf of the petitioners is vague. It has been rightly contended on behalf of the respondent that had the petitioners been diligent and in case the documents were illegible, they would have contacted the respondent or her counsel whose details were available on record. Needless to say, the petitioners have also not been able to show that subsequently, how they came to file the written statement without legible copies. There is no averment that the written statement was filed after obtaining the certified copies of the document or by inspecting the record. Thus, the petitioners have not established that the documents were illegible as the written statement came to be filed by them on 28.02.2023.

20. The judgment relied upon by the petitioners is distinguishable from the facts of the present case as undisputedly in the said case legible copies were supplied to the defendant after the court had passed the order, however,



the written statement was filed beyond the stipulated 30 days period as prescribed but was well within the outer limit of 120 days period. Whereas in the present case the petitioners have failed to pin point the documents which were not legible but were essential for filing the written statement. Therefore, the submissions of the petitioners are casual, vague and bald contending that some of the documents supplied were illegible copies, therefore, on the basis of unclear and unequivocal submissions, the time to file written statement cannot be extended.

21. The learned Trial Court thus has correctly observed that there is nothing on record which suggests the documents have ever been supplied to the respondent thereafter. The learned Trial Court also found that the petitioners in affidavit of admission and denial have specifically admitted or denied the documents filed by the respondent and have not raised the plea that they would not be in a position to admit or deny the documents as legible documents were not supplied.

22. Having considered the above and the view expressed by this Court, there is no illegality in the impugned order. The petition along with pending application is dismissed.

SHALINDER KAUR, J.

APRIL 22, 2024
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