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

+ CM(M) 2418/2024, CM APPL. 24437/2024--Stay

ASHIMA INFRASTRUCTURE PVT LIMITED & ANR.

..... Petitioners

Through: Mr. Shanker Kumar Jha & Mr. Manu
Monga, Advs.

versus

CANARA BANK

..... Respondent

Through: Mr. Pradeep Chandra Rai, Adv.for R1

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

08.05.2024

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1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 07.03.2024 and 04.04.2024 passed by learned District Judge (Commercial Court-12), Central District, Tis Hazari Courts, New Delhi ("Trial Court") in Civil Suit (Comm.) No. 1534/2023 titled as "*Canara Bank vs Ashima Infrastructure Pvt. Ltd. & Ors*" whereby vide the order dated 07.03.2024, the written statement of the petitioners was permitted to be taken on record, subject to the cost of Rs. 30,000/- and thereafter, vide the order dated 04.04.2024, written statement of the petitioners was taken of the record in view of non-compliance as to payment of cost imposed earlier.

2. Learned counsel for the petitioners submits vide order dated 07.03.2024, the learned trial court had permitted the written statement filed



on behalf of the petitioners to be taken on record subject to cost of Rs.30,000/-. Out of which Rs.20,000/- was to be deposited with a registered society working for Alzheimer patients in the name of '*Hope ek Asha*' at State Bank of India, Branch-Masjid Moth, New Delhi and the balance of Rs.10,000/- cost was to be paid to the respondent no.1 who is the plaintiff in the suit before the learned Trial Court. However, due to bad financial condition of the petitioner as the petitioner had earlier taken a loan from the respondent bank and had not been able to pay the same, thus, the said cost could not be deposited with the learned Trial Court as directed by it. Therefore, the petitioners had moved an application seeking waiver of cost which came to be dismissed vide the impugned order dated 04.04.2024 and on the said date while dismissing the application, the learned Trial Court also did not allow their written statement to form part of the record.

3. Learned counsel submits that in these circumstances, as stated by the petitioners in the petition as well as in the application seeking waiver of cost, the cost may be waived and the learned Trial Court be directed to take the written statement on record.

4. Issue notice. Learned counsel enters appearance on behalf of the respondent on advance notice, accepts notice and he has confuted the aforesaid submissions contending that the petitioners have been taking contradictory stand before this Court and in the application seeking waiver of the cost. Further submits that in the application, no averment with regards to the financial constraints of the petitioner has been made and rather has submitted on the ill advice given to him by his previous advocate the said application waiver of cost had been filed.

5. It is further submitted that since the petitioners failed to show any



bonafide reason, therefore, the present petition is liable to be dismissed.

6. Submissions heard. Record as well as the impugned orders passed by learned Trial Court have been perused.

7. Learned Trial Court vide order dated 07.03.2024 after taking into account of the factual matrix of the case and the delay in filing the written statement on behalf of the petitioners allowed the written statement to form part of the record subject to the cost of Rs.30,000/- and the matter was listed for 04.04.2024. The cost was directed to be paid within two weeks.

8. It is not disputed that the petitioners failed to pay the cost as directed by the learned Trial Court but moved an application seeking waiver of the cost which came to be heard by the learned Trial Court on 04.04.2024. On the said date of hearing, the learned Trial Court observed that since the petitioners have not complied with previous order dated 07.03.2024, thus, the written statement was taken off the record and the application was dismissed.

9. Having considered the above, the petitioners are directed to pay cost of Rs. 20,000/-, i.e. Rs.10,000/- to respondent no.1 who is plaintiff before the learned Trial Court on the next date of hearing before the learned Trial Court and the remaining Rs.10,000/- to the registered society '*Hope ek Asha*' within a week from today, subject to which the written statement would be taken on record by the learned trial court.

10. With the above observations, the impugned order dated 04.04.2024 is set aside and accordingly, the present petition stands disposed of along with pending application.

SHALINDER KAUR, J.

MAY 08, 2024/ab