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

+ **FAO(OS) 78/2024 & C.M.Nos.32327-32330/2024**

AJAY KUMAR HUF & ORS.

..... Appellants

Through: Mr.Rahul Malhotra with Mr.Kaustubh
Punj, Advocates.

versus

VINAY KUMAR HUF & ORS.

..... Respondents

Through: Mr.Atul Sharma with Mr.Sanjay
Gupta and Mr.Abhinav Sharma,
Advocates for R-1 to 3.

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Date of Decision: 28th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the order dated 1st March, 2024 passed by the learned Single Judge in CS(OS) No.598/2019, whereby the Chamber Appeal bearing No.38/2022 against the order of the learned Joint Registrar dated 31st May, 2022 was dismissed.

2. Learned counsel for the appellants states that the Chamber Appeal bearing No.38/2022 was filed under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 CPC on behalf of appellant nos.1, 2 and 3 for re-calling/modification/setting-aside the order dated 31st May, 2022, vide which Joint Registrar had closed the right of the appellants to file a written Statement, by observing that the statutory period



of 120 days from the date of service, had already expired.

3. He states that appellant nos.1, 2 and 3 entered appearance in the captioned suit on 14th January, 2022, however, due to the Covid-19 pandemic, the written statement could not be filed. He states that as per order dated 10th January, 2022 passed by the Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020***, the period from 15th March, 2020 to 28th February, 2022 stood excluded for the purposes of limitation and a further period of ninety days was provided in the cases where the limitation stood expired between 15th March, 2020 to 28th February, 2022.

4. He states that the Appellants believed that they had time upto 30th May, 2022 to file their written statement. He states that on 31st May, 2022, the written statement could not be filed on their behalf, as appellant no.2 was out of station. He further states that the learned counsel on their behalf appeared on 31st May, 2022 and requested the Court to grant them three days time to file the written statement, however, their right to file the same was closed by the Joint Registrar. He states that the written statement was filed on 4th July, 2022 i.e. the first working day after vacation with a copy to the counsel for respondent nos.1 to 3.

5. Consequently, according to him, there was a delay of four days only in filing the written statement, if limitation is computed in terms of the order of the Supreme Court.

6. He also states that similar matters pertaining to condonation of delay in filing the written statements are pending before this Court.

7. *Per contra*, learned counsel for the respondents points out that this Court had closed for Summer Vacations on 03rd June, 2022 and not on 31st May, 2022 as stated by the learned counsel for the appellants.



8. He further states that the appellants (herein) cannot rely on appeals that are alleged to be pending consideration before this Court, as the appellants have already availed of the extended period of limitation in accordance with the order of the Supreme Court in the present case.

9. According to him, the limitation period laid by the Supreme Court under Article 142 of the Constitution of India cannot be extended by this Court while hearing an appeal.

10. Having heard learned counsel for the parties, this Court finds that the summons in the present case had been validly served upon the appellants on 10th December, 2021. All the appellants had put in their appearance through counsel before the Court for the first time on 14th January, 2022.

11. This Court is of the view that since the appellants had been served on 10th December, 2021, they should have filed their written statements within 120 days i.e. upto 9th April, 2022. Since this period came within the Covid-19 pandemic period, the period of limitation stood extended in view of the Supreme Court decision till 30th May, 2022 only.

12. However, as the written statements were not filed by the appellants during the period extended by the Supreme Court, this Court is of the view that it cannot extend the period of limitation as that would amount to going beyond the order passed by the Apex Court.

13. Further, as the limitation for filing the written statements in accordance with the order of the Supreme Court had expired prior to the summer vacations, the vacation period would also have to be counted while calculating the delay period. Consequently, the delay in the present case was not of just four days as contended by the learned counsel for the appellants.



14. In view of the aforesaid, present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 28, 2024
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Signature Not Verified

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FAO(OS) No.78/2024

Page 4 of 4