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

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Date of decision: February 26, 2024+ CM(M) 1041/2022, CM APPL 54091/2022 (Stay) & 12694/2023
(delay)

RAHUL GUPTA

..... Petitioner

Through: Mr. Niloy Dasgupta, Adv.

versus

ANIL KUMAR

..... Respondent

Through: Mr. Abhishek Chaturvedi, Adv.

CORAM:**HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T (oral)**

1. The present petition under Article 227 of the Constitution of India has been filed assailing the impugned orders dated 11.11.2016 and 01.07.2022 passed by the Learned Additional District Judge -02, Shahdara, Karkardooma Courts, Delhi ("Trial Court") in CS NO. 1584/2016 titled as "*Rahul Gupta vs Anil Kumar*" whereby the learned Trial Court closed the right of the petitioner/defendant in filing of the written statement in the counter claim filed by the respondent for eviction and arrears of rent.

2. The factual matrix of the present case are such that sometime in January, 2012, the petitioner and the respondent entered into an oral agreement whereby the respondent agreed to sell his land bearing no. D-53,



Gali No. 13, Jagatpuri Extension, Delhi (“Suit property”) and further to build a house for petitioner for a total sale consideration of Rs. 24 lakhs, out of which 11 lakhs were paid by the petitioner as on 25.01.2015.

3. As an interim arrangement, the respondent offered the petitioner to stay in one of his houses i.e. B-23A, Gali No. 11, Jagatpuri Extension, New Delhi till the time the aforesaid oral agreement fructifies i.e. till the house is built on the plot of land. As per the arrangement, the petitioner was required to pay only utility charges from 15.10.2013, date on which the keys were also handed over to the petitioner. This arrangement continued till date.

4. However, by the end of 2015, the relationship got bitter and the respondent refused to keep his end of the bargain. Subsequently, in March, 2016, the petitioner filed a suit for recovery of Rs. 11 lakhs which came to be registered bearing CS No. 1584/2016.

5. The crux of the matter emanates from the counter claim filed by the respondent on 12.05.2016, for eviction and for claiming arrears of rent, the copy of which was supplied to the petitioner and he was directed to file the written statement. The aforesaid counter claim was being tried along with the present suit and was later vide order dated 11.11.2016 directed to be registered as a separate suit bearing no. 21/2017 titled as “*Anil Kumar vs Rahul Gupta*”.

6. Petitioner contends that the counsel for the petitioner developed heart problems and ultimately underwent open heart surgery in 2016 and was advised to take a complete bed rest. Due to the aforesaid predicament, the learned counsel for petitioner could not file the written statement to the



counter claim within the stipulated time and filed it on the next date of hearing i.e.11.11.2016, which was 92 days beyond the 90 days of statutory period.

7. Petitioner submits that on the said date of hearing, the written statement of the petitioner herein to the counter claim was not taken on record and thus the defence was struck off on account of delay. On 01.12.2016, an application for recalling of the order dated 11.11.2016 and application under section 5 of the limitation act for condonation of delay, were filed by the counsel for the petitioner. The aforesaid application were not taken up for hearing up until 01.07.2022, which came to be dismissed by the learned trial court vide the impugned order. Aggrieved by the aforesaid factual position, the petitioner filed the present petition before this court.

8. The learned counsel for the petitioner submits that the learned trial court did not consider the entire circumstance wherein the counsel for the petitioner was suffering from serious medical ailments. Further submits that taking the written statement on record would not prejudice the case of the counter claimant in any manner and grave miscarriage of justice will be caused to the petitioner, if he is denied his right to place it on record.

9. Per contra, the learned counsel for the respondent submits that the petitioner neither challenged the order dated 11.11.2016 nor took any steps to file appropriate application for recalling of order dated 11.11.2016 in suit i.e. CS 21/2017 but made submissions before the learned trial court in a casual manner, moreso, vide order dated 27.07.2017, he had filed the application in the wrong suit i.e. CS 1584/2016.



10. Further submits that from 11.11.2016 to 24.03.2021, no steps were taken by the petitioner to challenge the order dated 11.11.2016. Therefore, the intention of the respondent is clearly to delay the proceedings and to illegally occupy the property of the respondent without paying rents.

11. Further, the learned counsel submits that on 01.10.2022 petitioner again referred to his application dated 01.12.2016 for condonation of delay in filing the written statement which was filed in the wrong suit i.e. suit no. 1584/2016, the plea which is not tenable in law as the order dated 11.11.2016 has attained finality. Thus, the application filed by the petitioner aimed at reviewing or recalling the order dated 11.11.2016 is not permissible under law.

12. It is also submitted that the present petition is hopelessly barred by limitation since the petitioner is challenging the order dated 11.11.2016 passed by the learned trial court. Furthermore, there was a delay of 152 days in filing the written statement and the same was not accompanied by any application for condonation of delay and hence, the defence was struck off, thus, there is no illegality in the impugned order.

13. Rival submissions heard, record and impugned order perused.

14. The counter claim was filed by the respondent on 12.05.2016 and after having received the copy of the same, petitioner was directed file the written statement. However, due to underlying medical condition and treatment, he could not file the same within the stipulated period and filed it only on 11.11.2016, on date which his right to defence was also struck off.

15. The stand of the petitioner is that his counsel faced hardship during the



time he was undergoing the health treatment and also for recuperating from the surgery undergone and hence could not file the written statement within the time stipulated under the CPC.

16. The present suit before the learned trial court is not governed by the rigours of timeframe under the Commercial Courts Act, 2015, therefore the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory and only directory as has been laid down by the Hon'ble Supreme Court in catena of judgements.

17. The Hon'ble Supreme Court in the case of **Bharat Kalra vs Raj Kishan Chabra** CA 3788 of 2022 while observing its previous judgment in **Kailash vs Nanhku** has held as under:

"Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash V. Nankhu & Ors.' reported in (2005) 4 SCC 480. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable."

18. The Apex Court **in Kailash vs Nanhku** Civil Appeal 7000/2004 held as under:

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.



(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.

Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

19. Further, in ***Salem Advocate Bar Association Tamil vs Union of India WP(C) 496/2002***, it was held as under:

“The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

20. It manifests from above judgments that legislature has fixed upper time limit for filing of the written statement under Order VIII Rule 1 CPC to be 90 days, which Rule though directory should not be extended as a matter of routine but only in case of exceptional hardship on explaining the reasons for the delay.



21. In the present case, the counter claim was filed on 12.05.2016 and written statement was filed on 11.11.2016. The application under Section 5 of the Limitation Act read with Section 151 CPC was filed seeking condonation of delay on 01.12.2016. Perhaps same was placed in the main suit and not with counter claim that was registered separately. The reasons assigned by the petitioner leading to delay in filing the written statement are:-

“On 12.05.2016, the counsel for petitioner was out of town and due to compelling health reasons, he was not available in month of May and during summer vacation, he returned to Delhi on 30.06.2016. In the first week of July, the petitioner handed over the copy of counter claim to his counsel, who was about to prepare written statement but after three days, he became seriously ill and was hospitalized on the subsequent dates, being 01.08.2016 and 19.09.2016, he remained under treatment on account of open heart by-pass surgery in Max Hospital, Delhi. The written statement was prepared as soon as the counsel was in position to attend the table work and was filed on 11.11.2016, however, the learned Trial Court on the said date failed to appreciate the aforesaid unfortunate circumstances and closed the right of the petitioner to file written statement. The petitioner has thus pleaded that learned Trial Court should have condoned the delay of 92 days in filing the written statement and committed a grave error by closing the right of the petitioner to file written statement.”

22. It is often explained that procedure is the handmaid of justice. Procedural hurdles shall not be allowed to come in way of doing substantial justice by the Courts unless the procedural defects cause serious prejudice to the opposite side.

23. In the present case, the learned Trial Court has passed a fundamentally casual order. The impugned order reads as under:-

“Counsel for counter claimant objected that more than 160 days have been passed and defendant has not filed WS within statutory period and nor filed any application for condonation of delay for filing WS.



Considering this fact, right of plaintiff/respondent for filing of WS have been closed.”

24. It is undisputed that application seeking condonation of delay was not filed alongwith written statement but was filed subsequently on 01.12.2016, which has skipped the notice of the learned Trial Court and learned Trial Court has closed the right of the petitioner to file written statement without considering the application seeking condonation of delay. Needless to say, the delay of 92 days in not filing the written statement has been well explained by petitioner. Thus, in view of the above, the written statement shall form part of the record. However, the petitioner is required to compensate the respondent for delay caused in the proceedings of the case. The petitioner to pay cost of Rs.20,000/- to respondent on the next date of hearing before learned Trial Court.

25. As the proceedings of the suit have been considerably delayed, the learned Trial Court to make an endeavor to expedite the disposal of the counter claim preferably within six months. The impugned orders dated 11.11.2016 and 01.07.2022 are set aside. Consequently, the petition is allowed and the pending applications stand disposed of.

SHALINDER KAUR, J.

FEBRUARY 26, 2024
SDS/KM