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

% ***Date of decision: 29th July, 2024***

+ **CM(M) 3032/2024 & CM APPL. 42345/2024**

SURENDER SINGH PAUL

.....Petitioner

Through: Mr. Dinesh Chander Yadav, Mr.
Ishwar Chand and Ms. Mayuri Yadav,
Advocates

versus

SAVITA PAUL

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 42345/2024

Exemption allowed, subject to all just exceptions.

CM(M) 3032/2024

1. Petitioner is plaintiff before the learned Trial Court and has filed a suit against his estranged wife seeking declaration and possession.
2. The suit was registered on 26.07.2023 and the respondent accepted the notice. However, the written statement was filed by her as late as on 19.02.2024.
3. Such belated filing of written statement compelled the petitioner to file an application before the learned Trial Court under Order VIII Rule 1 CPC praying therein that such written statement may be taken off the record as she has not disclosed any reason as to why written statement was not filed within the stipulated period.
4. Undoubtedly, there is delay in filing the written statement.



5. According to learned counsel for the petitioner, the delay is exceptional and moreover no reason has been assigned by the respondent/defendant as to what made her file written statement with such a huge delay of around 117 days.

6. It is noticed that learned Trial Court kept in mind the fact that defendant was an old lady and she was managing her household affairs and was also pursuing and defending other litigations before several Courts between she and her husband.

7. It also took note of the fact that as per Section 10 (3) of Family Courts Act, 1984, the Court can always lay down its own procedure and, therefore, the strict procedure prescribed for and meant for Civil Courts cannot automatically applicable to the Family Courts.

8. Admittedly, suit is between petitioner and his wife and he seeks declaration and possession of the immovable property in question.

9. It is noticed that respondent had appeared before the learned Trial Court represented through a counsel provided by Delhi State Legal Service Authority.

10. Needless to emphasize, the approach of the Trial Courts, while dealing with such kind of matters having shades of matrimonial disputes, should be little liberal and not hyper-technical.

11. Qua ordinary civil suits also, the period of filing of written statement within the prescribed period is not mandatory and in given circumstances, delay in filing written statement can be condoned. Reference be made to *Kailash V. Nankhu and Others (2005) 4 SCC 480*.

12. Be that as it may, in the case in hand, the learned Trial Court, while appreciating the overall facts of the case, turned down the request made by



the plaintiff and directed him to file replication and thereafter for completion of pleadings, admission/denial of documents and framing of issues.

13. This Court is of the considered view that the discretion seems to have been exercised in a judicious manner and liberal approach has been adopted by learned Trial Court keeping in mind the fact that defendant is a poor lady, represented through a legal aid counsel.

14. This Court is also conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

15. Finding no substance in the present petition, same is hereby dismissed *in limine*.

16. Learned Trial Court is also requested to expedite the disposal. Needless to say, both the sides would render their due assistance and co-operation in this regard to the learned Trial Court.

(MANOJ JAIN)
JUDGE

JULY 29, 2024/dr