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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 29th July, 2024***
+ **CM(M) 3037/2024 & CM APPL. 42394-42395/2024**

MS SANTOSH SHARMAPetitioner
Through: Mr. S.K. Gandhi, Advocate.

versus

MS ANITA ARORARespondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
JUDGMENT (oral)

1. Petitioner is defendant before the learned Trial Court and is aggrieved by the fact that his opportunity to file written statement has been closed and his defence has been struck off.
2. Admittedly, when the matter was taken up by the learned Trial Court on 17.05.2019, learned counsel for the defendant did appear before the learned Trial Court. The learned Trial Court noticed that no written statement had been filed till that date and, therefore, it struck off her defence with limited right to cross-examine the witnesses of the plaintiff.
3. The written statement was eventually prepared and was submitted by moving an application under Order VIII Rule 1 CPC.
4. Such application was moved as late as on 20.03.2024.



5. No justifiable or compelling reason has been cited which prevented the defendant from not participating in the proceedings or submitting the written statement in time before the learned Trial Court.

6. It will be appropriate to extract para numbers 2 to 5, as mentioned in her application moved under Order VIII Rule 1 read with Section 151 CPC.

“2. That it is most respectfully submitted that on 17.05.2019, due to non-filing of written statement by the defendant, the defence of defendant was struck off with limited to right to cross examine the of the plaintiff witnesses, and matter further got listed for Plaintiff Evidence. Accordingly, the evidence of the plaintiff was got done, thereafter, the defendant had been cross examined the plaintiff witness and the matter further fixed for final argument.

3. That during the course of final argument, the defendant has engaged her new counsel, who has filed his Vakalatnama on dated 02.02.2024 and the matter was fixed for final argument on 26.02.2024.

4. That on 26.02.2024, the plaintiff has moved an application U/s 151 CPC for the purpose of production of documents/records from DDA, thereafter, the matter is fixed for 20.03.2024 for miscellaneous arguments.

5. That earlier counsel had filed the written statement but same could not be taken on record by this Hon'ble Court and the defence of the defendant was struck off.”

7. When the aforesaid application was taken up by the learned Trial Court on 23.07.2024, same was dismissed.

8. It is quite obvious that the petitioner (defendant before the learned Trial Court) is taking Courts to a ride. Despite the fact that she was duly represented before the learned Trial Court, she, for the



reasons best known to her, did not attempt to participate in the proceedings in the desired manner and did not file any written statement within the initial stipulated period of 30 days, as per the mandate of Order VIII Rule 1 CPC.

9. Undoubtedly, the period is directory and not mandatory but that does not give any automatic handle to any defendant to wake up from its deep slumber as per its own whims and fancies and to move an application with the request that since the provision is directory, the written statement be directed to be taken on record.

10. Moreover, when the matter was initially taken up by the learned Trial Court way back on 17.05.2019, counsel for the defendant had himself informed the learned Trial Court that the defendant had already sold the property to someone else. That being so, it is not understandable as to on what basis, the petitioner is now left with any grievance as she does not even has the possession with her. Needless to say, the present suit is for specific performance and also seeks mandatory injunction with respect to the same property, which she has, allegedly, transferred to someone else.

11. During course of the arguments, it was also contended that the steps, in the interregnum, could not be taken because of the pandemic of Covid-19. However, such argument also does not cut any ice as the right was closed way back on 17.05.2019.

12. The change in counsel cannot give any such right to any party to seek permission to place on record written statement after around 5



years. There has to be a full stop. The Court can come to rescue of a party who was prevented by some justifiable cause. No indulgence can be given to a party who is totally dormant, apathetic and inactive.

13. Consequently, finding no merit or substance in the present petition, the same is dismissed *in limine*.

(MANOJ JAIN)

JUDGE

JULY 29, 2024/st