



2024:DHC:10210



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 10th December, 2024

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C.R.P. 241/2024, CM APPL. 46795/2024

1. YOGESH SHARMA
S/o Shri Radhey Shyam Sharma,
R/o H. No. 1/2473, Gali No. 26,
East Ram Nagar, Shahdara, Delhi-, 110032.
.....Petitioner No.1.
2. SH. VIRENDER ARORA
S/o Late Shri Daulat Ram
R/o 83A, DDA Flat, Mansarovar Park
Shahdara, Delhi-110032.
.....Petitioner No.2.
3. SH. SUSHIL RATHI
S/o Khem Chand Rathi
R/o H. No. 1/2056, Gali No. 22,
Ram Nagar, Shahdara, Delhi-110032.
.....Petitioner No.3.
4. SH. DEVENDER SHARMA
S/o Roop Chand Sharma,
R/o J-1/1422, Mansarovar Park,
Shahdara, Delhi-110032.
.....Petitioner No.4.
5. SH. YASHPAL GUPTA
S/o Late Shri Gyan Chand Gupta,
R/o 1/1888, Mansarovar Park,
Shahdara, Delhi-110032.
.....Petitioner No.5.
6. SH. SATISH GUPTA
S/o Late Shri Ram Kumar
R/o 24, Manak Vihar, Delhi-110092.
.....Petitioner No.6.

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Signing Date: 13/02/2025 16:43:45

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7. SH. PAWAN GOEL
S/o Late Shri B.L. Goel,
R/o B-27, Sector-48, Noida-201303

.....Petitioner No.6

Through: Sh. Vishal Bakshi, Advocate.

versus

1. DURGA MANDIR DHARMIK TRUST
Office at 1/1948, East Ram Nagar,
Shahdara, Delhi- 110032

.....Respondent No.1.

2. SH. SURENDER PAL SAINI
S/o Sh. Nanwa Ram Saini
R/o 1/1948 East Ram Nagar
Shahdara Delhi-110032

.....Respondent No.2.

3. SH. TARVINDER SAINI
S/o Sh. Surender Pal Saini
R/o 1/1948 East Ram Nagar
Shahdara, Delhi-110032

.....Respondent No.3.

4. SH. MAHENDRA KUMAR AGGARWAL
S/o Late Jayanti Prasad Aggarwal
R/o G-62-1/1126 M.S. Park
G.T. Road, Shahdara Delhi-110032.

.....Respondent No.4.

5. SH. JAI PRAKASH SHARMA
S/o Late Sunhera Lal Sharma
R/o 1/2229 Gali No.2, Near Pandit Chowk,
Ram Nagar, Shahdara, Delhi-110032.

.....Respondent No.5.

6. SH. JUGMINDER LAL GUPTA
S/o Late Gurbax Ram

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R/o H No. 1/2062, Near Durga Mandir Marg
Ram Nagar, Shahdara, Delhi-110032.

.....Respondent No.6.

7. SH. SUSHIL VERMA
S/o Sh. Virender Verma
R/o 1140/E-2 Street No.10
Durga Puri, Shahdara, Delhi-110032.

.....Respondent No.7.

8. SH. JAGDISH KUMAR AGGARWAL
S/o Sh. Puran Chand Aggarwal
R/o 1/2411, Durga Mandir Marg,
Shahdara, Delhi- 110032.

.....Respondent No.8.

9. SH. RAJENDER KUMAR SHARMA
S/o Sh. Ram Lal Sharma
H. NO. 1884 G No. 24. Ram Nagar
Shahdara Delhi- 110032.

.....Respondent No.9.

10.SH. DINESH KUMAR AGGARWAL
S/o Sh. Sharda Charam Aggarwal
H. No. A-41/A. Street No. 1,
West Nathu Colony, Shahdara
Delhi- 110032.

.....Respondent No.10.

11. SH. MANOJ KUMAR
S/o Sh. Kamal Singh Verma
R/o H. No. 7 Mansarover Delhi- 110032

.....Respondent No.11.

Through: Ms. Vipin Gupta, Ms. Nandani Gupta
and Mr. Krishna Kumar, Advocate for
R-1 to 11.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Civil Revision Petition under Section 115 of *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed against the Order



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dated 08.05.2024.

2. The right of the Revisionists to file the *Written Statement* was closed vide *Order dated 20.10.2023* against which the Review Petition has been filed, which has been dismissed vide Impugned Order dated 08.05.2024.

3. Essentially, the Petitioner No.1 to 4, namely, Sh. Yogesh Sharma, Sh. Virender Arora, Sh. Sushil Rathi and Sh. Devender Sharma, were served on 15.05.2023 and Petitioner No. 5/Sh. Sh. Yahspal Gupta was served on 17.05.2023. The Petitioner No. 6/Sh. Satish Gupta was served on 09.08.2023 and Petitioner No.7/Sh. Pawan Goel was served on 11.08.2023. However, Petition No. 1-5 failed to appear and were proceeded *ex-parte* on 26.07.2023. Thereafter, an Application under Order IX Rule 7 CPC, 1908 was filed, which was allowed on 14.10.2023, subject to costs and further time was granted to file the Written Statement and the matter was listed on 20.10.2023. However, on the said date none appeared at the given time and the right of the defendants to file Written Statement was closed.

4. *Learned counsel on behalf of the Revisionist* has argued that the time provided under Order VIII Rule 1 CPC, 1908 of filing the Written Statement within a period of 30 days and thereafter, within 90 days with the permission of the Court, which is directory and not mandatory. As has been held in the case of Bharat Kalra vs. Raj Kishan Chabra 2022 LiveLaw (SC) 465, the time limit for filing the Written Statement under Order VIII Rule 1 is not mandatory and the opportunity to file the Written Statement can be allowed to Petitioner



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No. 1 – 5 with compensatory costs.

5. Furthermore, the Petitioner No. 6 and 7 had been served only 70 days before the said date and therefore, at least they should be permitted to file the Written Statement.

6. *Learned counsel for the Respondent* has argued that despite two opportunities which were granted subject to cost, the Revisionist failed to file the Written Statement and they cannot now claim a fresh right to file the Written Statement.

7. **Submissions heard and record perused.**

8. The Petitioner No. 1 to 4 namely were served on 15.05.2023 and Petitioner No. 5 was served on 17.05.2023, however, they failed to file the Written Statement or appear in court and thus, were proceeded *ex parte* on 26.07.2023 (i.e. after 70/72 days). Thereafter, on an Application under Order IX Rule 7 CPC, 1908 filed by them, the *ex parte* Order was set aside *vide* Order dated 14.10.2023 and they were granted ***six days time*** to file the Written Statement.

9. The Petitioner Nos. 6 & 7, respectively were served on 09.08.2023 and 11.08.2023.

10. The matter was taken up again on 20.12.2023 but because neither the Written Statement nor any Application for condonation of delay was filed by the defendants, *their right to file defense was struck off vide* the Common Order dated 20.12.2023.

11. A Review Application was filed on 19.11.2023 which also got dismissed on 08.05.2024.

12. The timelines of issuance of summons and the subsequent events is encapsulated as under for the sake of clarity: -



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<i>Party</i>	<i>Date of Issuance of Summons</i>	<i>Days till Passing of Ex-parte Decree dated 26.07.2023</i>	<i>Days from ex-parte decree till Setting Aside of the ex-parte Decree on 14.10.2023</i>	<i>Total days till the Order dated 20.10.2023 striking off the right to defense</i>
Petitioner No. 1 - 4	15.05.2023	72 days	81 days	159 days
Petitioner No. 5	17.05.2023	70 days	81 days	157 days
Petitioner No. 6	09.08.2023	-	-	72 days
Petitioner No. 7	12.08.2023	-	-	69 days

13. Admittedly, the Petitioner Nos.1 to 5, despite an opportunity failed to file their Written Statement within the prescribed period of 30 days and thereafter, also did not move any Application for condonation of delay, to place their Written Statement on record. Though the Court gave them an opportunity on 14.10.2023 to file their Written Statement and move an appropriate application for condonation of delay, but the same also was not availed by them.

14. Similarly, though the Petitioner Nos. 6 & 7 have argued that because they were served on 09.08.2023 and 11.08.2023, their defense could not have been struck off on 20.10.2023, since only 72/69 days had elapsed while the right to file the Written Statement is of 30 days plus 90 days i.e. 120 days, which is not mandatory.

15. It is pertinent to observe that all the Defendants/Petitioners have admittedly failed to file their Written Statement within 30 days from the date of issuance of summons. Order VIII Rule 1, CPC, 1908 clearly provides that the Written Statement as a matter of right can be filed within 30 days and thereafter, it is only on an Application of the



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Defendants for condonation of delay that the Written Statement can be taken on record. Here neither any Application for condonation of delay has been filed nor the Written Statement filed despite the elapse of 30 days. Therefore, the claim of Defendants/Petitioners that their defense could not have been struck off on 20.10.2023, is not tenable.

16. Though it is evident from the narration of dates as above that none of the Petitioners/Defendants have filed their Written Statement within the time provided under Order VIII Rule 1 CPC, 1908, *however, it cannot be overlooked that it is not a commercial suit but a civil suit.* In the case of Bharat Kalra (Supra), the Apex Court has held that the timelines prescribed under Order VIII Rule 1 CPC, 1908 is not mandatory in regard to the Civil Suits which are not commercial in nature.

17. Considering the totality of circumstances **all the Petitioners are given a chance to file their Written Statement by 25.02.2025**, subject to a cost of Rs.10,000/- each, failing which they shall not be given any further opportunity and their defense shall stand struck off.

18. The present Petition is accordingly disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/va/rk