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

+ CM(M) 2071/2023, CM APPL. 64983/2023--stay

NEHA AGGARWAL

..... Petitioner

Through: Mr. Karan Luthra and Mr. Naman
Gowda, Advs.

versus

VISHAL AGGARWAL & ORS.

..... Respondents

Through: Mr. Amit P. Deshpande, Adv. for R1.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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29.01.2024.

1. The present petition under Article 227 of the Constitution of India has been filed for challenging the order dated 10.08.2023 passed by the learned Additional District Judge-1, Shahdara, Kardardooma Courts, Delhi, in CS No.142/2023 titled as "*Vishal Aggarwal vs. Rajesh Aggarwal & Ors.*", whereby the learned Trial Court has closed the right of the petitioner to file a written statement. The petitioner herein is the defendant no.1 before the learned Trial Court.

2. The learned counsel for the petitioner submits that in pursuance to the order passed by the learned Predecessor Bench on 15.12.2023. He has brought the Demand Draft of Rs. 5,000/- and has also placed a copy of the proposed written statements on record on 16.12.2023. The learned counsel for respondent no.1 submits that he is unwilling to accept the said Demand Draft but the petition itself is not maintainable.



3. The learned counsel for petitioner states that vide impugned order dated 10.08.2023 the learned Trial Court in the Civil Suit bearing CS No. 142/2023 erroneously closed the right of the petitioner herein to file written statement.

4. It is submitted that the petitioner herein was served with the summons of the suit on 13.03.2023 and was granted 30 days time by the learned Trial Court to file written statement. However, due to financial constraints he could not pay the fee of his advocate therefore, he was unable to file written statement within 30 days and moreover, the extended period of 120 days had expired on 11.07.2023.

5. In these circumstances, the learned Trial Court vide impugned order dated 10.08.2023 closed petitioner's right to file written statement.

6. It is further submitted that CS no. 43/2023 is the second suit filed by respondent no.1 herein against the petitioner, wherein, he has already filed the written statement. Moreover, the parties and the subject matter of the abovementioned suit are same to that of CS no. 142/2023 from which the impugned order dated 10.08.2023 has arisen.

7. The present petition has been strongly opposed on behalf of the respondent submitting that, in the other civil suit i.e. CS NO. 43/2023, filed by respondent no. 2 which is already pending with respect to the same subject matter, the respondent herein is not a party, but his father is.

8. Learned counsel for the respondent submits that there is no illegality in the impugned order dated 10.08.2023 passed by the learned Trial Court and moreover, the appropriate remedy with the petitioner herein was to approach the learned Trial Court itself against the impugned order but, instead, he approached this Court through a petition under Article 227 of the



Constitution of India.

9. On enquiring from both the parties about the stage at which the present suit is, it is submitted that, the matter is not progressing before the learned Trial Court as, the report of the Medical Board constituted at IBHAS, New Delhi with respect to respondent no.3 is being awaited and arguments on the application moved by petitioner herein under Order VII Rule 11 CPC with respect to respondent no.3 are to be addressed. Moreover, none of the other defendants have filed the written statements.

10. In view of the above submissions and circumstance no prejudice shall be caused to the respondent no.1, if the petitioner is permitted to file his written statement. The proposed copy of the written statement appears to have been inadvertently filed by the petitioner before this Court.

11. The petition is allowed subject to cost of Rs. 10,000/- to be paid within a week to respondent no.1.

12. Written statement to be filed within three days before the learned Trial Court with advance copy to other side.

13. It is submitted on behalf of the petitioner that today a Demand Draft of Rs. 5,000/- has been handed over to the learned counsel for respondent no.1 and the remaining cost of Rs. 5,000/- shall be paid within a week.

14. Accordingly, the present petition along with the pending applications stands disposed of.

SHALINDER KAUR, J.

JANUARY 29, 2024/SDS