



2024:DHC:8702-DB



\$~S-22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 157/2024 & CM APPL.64997/2024****CHANDNI FAZLI**

.....Appellant

Through: Mr.Ankit Jain, Advocate with
Mr.Mohit Gupta, Mr.Vishal Saxena,
Ms.Aayushi Jain, Mr.Aditya
Chauhan, Mr.Rishabh Jain,
Ms.Divyanshu Rathi and Ms.Radhika
Bansal, Advocates.

versus

RAZIA SULTANA AND ORS

.....Respondents

Through:

%

Date of Decision: 07th November, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, CJ : (ORAL)****CM APPL.64998/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Accordingly, the present application stands disposed of.

FAO(OS) 157/2024 & CM APPL.64997/2024

3. Present appeal has been filed challenging the order dated 20th September, 2024 passed in I.A. No.8769/2023 in O.A. No.105/2024 in CS(OS) 730/2022, whereby the learned Single Judge has allowed the chambers appeal and the delay in filing the written statement on the part of

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 14.11.2024
13:42:43

FAO(OS) 157/2024

Page 1 of 4



the Respondents 1 to 3 (Defendants No.1 to 3 in the underlying suit) has been condoned, subject to costs. The underlying suit has been filed by the Appellant (Plaintiff therein) seeking, *inter alia*, a preliminary decree of partition of the properties of her father Late Mr.Intezar Ahmed Siddiqui.

4. The chambers appeal was filed by the Respondents No.1 to 3, challenging the order of the learned Joint Registrar dated 3rd May, 2024, whereby I.A. 8769/2023 filed by them for condonation of delay in filing the written statement was dismissed.

5. Learned counsel for the Appellant states that the impugned order has been passed based on conjectures and surmises and without paying heed to the provisions of the Delhi High Court (Original Side) Rules, 2018 (“Original Side Rules”) by allowing the Respondents/Defendants No.1 to 3 to place on record their written statement despite the expiry of the statutory period of one hundred twenty (120) days. He further states that the learned Single Judge has erred by taking on record the written statement by simply opining that advance copy of the same was served upon the Appellant/Plaintiff within one hundred twenty (120) days after being served. According to him the said reasoning is not tenable in view of Rule 4 of the Original Side Rules. He submits that the interpretation placed by the learned Single Judge on Rules 3 and 4 of the Original Side Rules is erroneous. He lastly states that no application seeking condonation of delay in re-filing was filed.

6. Having heard learned counsel for the Appellant, this Court is of the view that the issue that arises for consideration in the present appeal is interpretation of Rules 3 and 4 of the Original Side Rules. The said Rules are reproduced herein below:-



“3. Affidavit of admission/ denial of documents alongwith written statement.- Alongwith the written statement, defendant shall also file an affidavit of admission/ denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents.

4. Extension of time for filing written statement.—If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/ deposited. **In case the defendant fails to file the affidavit of admission/ denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted.** In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.”

(emphasis supplied)

7. Upon a harmonious reading of Rules 3 and 4 of the Original Side Rules, this Court is of the view that if a written statement is filed within the stipulated time frame of thirty (30) days or within the further extended time period of ninety (90) days without admission/denial affidavit, then the same shall be taken on record. It is quite possible that in a given case, the Defendant would like to file his written statement and not his admission/denial affidavit as he may not like to dispute any of the documents filed by Plaintiff. Consequently, in the event the admission/denial affidavit is not filed within the stipulated period, the documents filed by the Plaintiff shall be deemed to be admitted as stipulated in Rule 4 of the Original Side Rules.

8. This Court is further of the view that the intent of Rules 3 and 4 of the Original Side Rules is to ensure that written statements are filed within a



2024:DHC:8702-DB



strict time frame and not that matters are decided without allowing the defence of the Defendants to come on record.

9. This Court is also of the view that since the written statement with complete particulars (except for the admission/denial affidavit) was filed in the month of March, there was no need to file a condonation of delay application, inasmuch as, the Appellant/Plaintiff has been given benefit of deemed admission of documents by the learned Single Judge in the impugned order. Moreover, as the learned Single Judge has imposed a cost of Rupees Fifty Thousand (Rs.50,000/-), this Court finds no ground to interfere with the impugned order.

10. Accordingly, the present appeal along with application is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 7, 2024
TS

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 14.11.2024
13:42:43

FAO(OS) 157/2024

Page 4 of 4