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

% ***Date of Decision: 20th May, 2025***

+ **CM(M) 674/2025 & CM APPL. 21299-21300/2025 & CM APPL. 28609/2025**

SANJAYPetitioner

Through: Mr. Pankaj Batra, Advocate.

versus

PALLAVI SHARMA & ORS.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Respondent Nos.1 and 2 herein have filed a suit for recovery of Rs.27,50,000/- with interest. Such suit is directed against three defendants including Sh. Sanjay (defendant No.3).
2. The present petition has been filed by said Sh. Sanjay i.e. defendant No.3.
3. The petitioner is aggrieved by order dated 03.02.2025 whereby his application moved under Order VIII Rule 1 CPC read with Section 151 CPC has been dismissed and his written statement, resultantly, has been directed to be taken off the record.
4. Admittedly, defendant No.3 had received summons of the suit prior to 14.02.2022.
5. Pursuant to such summons, defendant No.3 put in appearance before the learned Trial Court.



6. However, instead of filing any written statement, defendant No.3, rather, moved an application seeking rejection of the suit contending that he had nothing to do with the transaction, as alleged in the plaint, and that there was no cause of action against him. Such application under Order VII Rule 11 CPC was accompanied by an affidavit dated 31.05.2022.
7. Fact remains that such application was, eventually, dismissed as withdrawn by defendant No.3 on 29.08.2022.
8. On 06.12.2022, all the defendants in the abovesaid suit were proceeded against *ex-parte* and their defence was also struck off. Order dated 06.12.2022 would also indicate that there was no appearance from the side of the defendants and no written statement had also been filed by them.
9. Defendant No.3, whose defence had already been struck off and who was being proceeded against *ex-parte*, instead of filing any application seeking recall of the abovesaid order, filed an application under Order I Rule 10 CPC on 06.12.2022 and the learned Trial Court took note of the abovesaid application on 21.03.2023.
10. The abovesaid application was also dismissed by the learned Trial Court on 17.12.2024.
11. Thus, admittedly, defendant No.3 who was duly served with the summons and was represented by a counsel instead of filing written statement, rather, took recourse to the other available options and, as noted above, filed an application under Order VII Rule 11 CPC and after withdrawing the same, another application was filed under Order I Rule 10 CPC.
12. Eventually, defendant No.3 also filed an application under Order VIII Rule 1 read with Section 151 CPC and annexed his written statement along



with his such application. In his such application, he admitted that he had received summons of the suit and reiterated the filing of the abovesaid applications. He also claimed therein, that he never avoided filing of the written statement deliberately and, accordingly, sought permission of the Court to take his written statement on record.

13. Such application has been dismissed by the learned Trial Court on 03.02.2025 and the petitioner has taken exception to the abovesaid order.

14. Admittedly, summons were received by the petitioner herein prior to 14.02.2022.

15. The abovesaid suit was taken up by the learned Trial Court, earlier, on 14.12.2021 and there was direction to issue summons returnable 14.02.2022 and, admittedly, pursuant to the abovesaid summons, which were duly received by defendant No.3, he appeared before the learned Trial Court through his counsel on 14.02.2022. Though, according to defendant No.3, the complete set of the plaint and documents were not supplied to him, fact remains that, instead of making any request in this regard to the learned Trial Court or filing any written statement, the petitioner moved an application seeking rejection of the suit. Of course, there was one more application from his side which was moved under Section 151 CPC, seeking supply of documents but the endeavour of the petitioner was only to focus on his application moved under Order VII Rule 11 CPC and thereafter with respect to his another application whereby he was seeking deletion of his name from the array of parties.

16. Despite being served prior to 14.02.2022, the petitioner chose to submit his written statement, virtually, after three years as written statement was submitted before the learned Trial Court for the first time along with the



application dated 01.02.2025.

17. The learned Trial Court, categorically, noticed that defendant No.3 was represented by a counsel and his defence was struck off on account of non-filing of written statement and, therefore, the abovesaid application, moved at a belated stage which did not even disclose any plausible ground, was dismissed and written statement was, accordingly, directed to be taken off the record.

18. This Court is conscious of the limited scope of appreciation while entertaining any such petition under Article 227 of the Constitution of India. The interference is permissible only when there is some illegality or perversity in the order.

19. Impugned order dated 03.02.2025 takes record of all the relevant facts and dates.

20. Merely because of the fact that the petitioner, instead of filing any written statement, had chosen to pursue and persist with his application moved under Order VII Rule 11 CPC or, for that matter, under Order I Rule 10 CPC, would not earn him any extension of time, automatically.

21. The law in this regard is very clear.

22. Reference be made to *SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.*, (2019) 12 SCC 210 wherein Hon'ble Supreme Court clarified as under:-

“14. The learned counsel appearing for the respondents also relied upon R.K. Roja v. U.S. Rayudu [R.K. Roja v. U.S. Rayudu, (2016) 14 SCC 275 : (2017) 3 SCC (Civ) 270] for the proposition that the defendant is entitled to file an application for rejection of plaint under Order 7 Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order 7 Rule



11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records : (SCC p. 277)

“6. ... However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.””

23. Sh. Batra, learned counsel for the petitioner submits that there was no deliberate intention, to not participate in the proceedings and written statement was not filed on account of the wrong advice given by his counsel.

24. Reliance has been made upon *Rafiq and another vs. Munshilal and another: (1991) 2 SCC 788*, *Rama Ravalu Gavade vs. Sataba Gavadu Gavade: (1997) 1 SCC 261*, *The State of West Bengal vs. The Administrator, Howrah Municipality and others: (1972) 1 SCC 366*, *Nampal Singh and Another vs. Ramesh Chand: 2025 SCC OnLine Del 1881* and *Rani Kusum (SMT) vs. Kanchan Devi (SMT) and Others: (2005) 6 SCC 705* and it is contended that a party cannot be made to suffer on account of mistake of his advocate.

25. It, however, does not seem to be a case of wrong advice or any negligence.

26. There is a growing trend these days and any such defendant, instead of filing written statement, attempts to delay proceedings of suit, by filing applications one after the other.

27. It is thus not a case of wrong advice.

28. It is rather a case of advice-in-abundance.

29. Based on specific legal advice, instead of participating in the suit in the desired manner, the endeavour of the defendant herein was also to delay the proceedings and, therefore, the petitioner cannot earn any compassion,



merely, because of the fact that he had filed the abovesaid applications as per legal advice. There was no one to prevent the defendant to, simultaneously, file written statement on first available opportunity. Belated filing of written statement, after three years, is not acceptable or warranted from any angle whatsoever, in view of the factual matrix of the case in hand.

30. Finding no merit or substance in the present petition, the petition is, accordingly, dismissed.

31. Pending applications also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 20, 2025/st/pb