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

+ CM(M) 3778/2024 & CM APPL. 65108/2024 STAY & CM APPL.
7570/2025 (early hearing)
ANU KAPURPetitioner

Through: Mr. Manu Chaturvedi, Adv.

versus

DURGA PRASAD RAYRespondent
Through: Mr. Jugal Bagga, Adv.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
06.03.2025

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1. Respondent has since filed reply to the petition. However, the learned counsel for the petitioner submits that he has not received the copy of the same. Learned counsel for the petitioner submits that he is ready to address arguments without relying upon the reply filed.
2. Since a very short issue is involved, with the consent of both sides, the matter is taken up for final disposal.
3. The challenge in the petition pertains to an order dated 30.09.2024, passed by the learned Civil Judge in Civil Suit No. 2786/2021, whereby, written statement filed on 03.05.2022, representing the same to be filed on behalf of the petitioner, was taken off the record and the right of the petitioner to file the written statement was closed.
4. Shorn of the unnecessary details, the brief facts are that respondent filed a suit for damages/compensation for defamation and for permanent



injunction against the petitioner. Summons were served to the petitioner on 28.12.2021.

5. Ms. Vasu Singh, Advocate appeared for the petitioner on 15.02.2022. The trial court observed that the Vakalatnama and application under Order 7 Rule 11 CPC were filed on behalf of the petitioner via email, and therefore, directed the counsel to file the hard copy of the same.

6. Vide order dated 28.04.2022, the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed.

7. In the meanwhile, respondent filed an application under Order 8 Rule 10 CPC and the petitioner filed written statement. The court, in its order dated 11.07.2022, took note that in the Vakalatnama filed by the petitioner, it is mentioned that North Delhi Municipal Corporation has appointed Ms. Vasu Singh as counsel to represent the MCD, even though, MCD was not a party to the suit. Petitioner also filed an application under Order 8 Rule 1 CPC.

8. Vide order dated 30.08.2024, learned trial court observed that written statement placed on record has not been filed by the petitioner in her personal capacity and also that Ms. Vasu Singh, appearing on behalf of the MCD, did not file separate Vakalatnama on behalf of the petitioner. The relevant paras of the impugned order are extracted below:-

“ Perusal of record reveals that the present suit has been filed only against defendant Dr. Anu Kapoor for damages/compensation for defamation and permanent injunction. The defendant was served by ordinary process on 28.12.2021 and through Whatsapp on 03.01.2022. The present counsel Ms. Vasu Singh appeared on behalf of defendant and she stated to have filed the vakalatnama via email and she was directed to file hard copy of said vakalatnama within 2 days but as it appears from record that there is no vakalatnama filed on behalf of defendant authorizing Ms. Vasu Singh to appear on her behalf on record though Ms. Vasu Singh, Ld. counsel has been appearing since beginning in the present matter. The



application under order 7 Rule 11 CPC filed on behalf of defendant was also dismissed by this court vide order dated 28.04.2022. On 11.07.2022 the WS alongwith certain documents and vakalatnama was filed by the defendant and the said vakalatnama did not bear the signature of the defendant rather it bears the signature of MCD official. Further from the perusal of WS and affidavit dated 18.05.2022 accompanying the said WS which is in the name of defendant she has stated herself to be deposing under the delegated powers of Commissioner, North DMC and thus it is clear that WS which is on record has not been filed by defendant in her personal capacity also Ms. Vasu Singh appearing on behalf of MCD admits to the said fact that no vakalatnama has been filed separately on behalf of defendant nor WS has been filed on behalf defendant. On enquiry it is stated by her that defendant was acting in official capacity and for this reason department thought to reply on behalf of defendant. And further she admitted to be representing the MCD and not the defendant Dr.Anu Kapoor.

In view of the admitted fact that there is no vakalatnama nor the WS filed by defendant herself in the present matter. The right of the defendant to file WS is hereby closed. Further the WS which has been filed on behalf of MCD on 03.05.2022 representing the same to be filed on behalf of defendant is hereby taken off the record as MCD is not party to the suit and nor any application till date has been filed on behalf of MCD to be impleaded as party to the present suit.

In view of the above, the application u/s 151 CPC filed on behalf of plaintiff on 07.07.2022 is hereby allowed and Ms. Vasu Singh is directed to file proper vakalatnama on behalf of defendant Dr. Anu Kapoor if she wish to represent her till then she stands discharged. Further the application under order 8 rule 1 CPC filed on behalf of MCD on 11.07.2022 to condone the delay in filing WS thus becomes infructuous since the said WS/reply of the MCD has been taken off the record as stated above.”

9. Learned counsel for the petitioner submits that the affidavit in support of the written statement was signed by the petitioner, inadvertently believing that all the allegations have been levelled against her while discharging her official duties and she signed the same stating her official designation. It is further submitted that since the act of the petitioner was in discharge of her official duties, she had sought legal assistance from her employer i.e. Municipal Corporation of Delhi, which in turn, had appointed Ms. Vasu



Singh to plead her case before the court.

10. Learned counsel further submits that the contents of the written statement and the accompanying affidavit establish that the same were duly signed by the petitioner. It is argued that even if there was some defect in the affidavit, the trial court ought to have granted liberty to the petitioner to cure the said defect in terms of Section 26(2) CPC and under Order 6 Rule 15 CPC. It is submitted that had such an opportunity being granted, petitioner would have filed a proper affidavit in support of the written statement in her personal capacity.

11. It is also submitted that written statement could not have been taken off the record on the technical ground that affidavit in support of the written statement, notifies her designation with the MCD and the inference of the trial court that the written statement was by MCD, merely relying on the affidavit is not only erroneous but is also bad in law, particularly when in the written statement, there is no averment or submission that the same is being filed by the Municipal Corporation of Delhi.

12. *Per contra*, learned counsel for the respondent submits that the affidavit filed by the petitioner in support of the written statement, notifies her designation with the MCD and the same signifies as if the written statement and affidavit have been filed on behalf of the MCD and not in her individual capacity as defendant in the case. It is submitted that wrong affidavit vitiates the entire pleadings. It is also submitted that no Vakalatnama had been filed by the counsel on behalf of the petitioner, and therefore, there was no proper written statement on behalf of the petitioner, as mandated under Order 8 CPC. It is also argued that during trial, petitioner was adamant not to file the Vakalatnama of the counsel, as observed by the



trial court in its order dated 23.01.2025.

13. Having heard the rival submissions addressed by the learned counsels and upon perusal of the record, I am unable to sustain the impugned order dated 30.09.2024, passed by the learned Civil Judge. The written statement clearly stipulates that the same was filed on behalf of the defendant. The written statement bears the signatures of the petitioner as defendant. The only the defendant in the suit is the petitioner. At no place in the written statement, there is an assertion that the same is being filed by the petitioner on behalf of the Municipal Corporation of Delhi. Therefore, the written statement, placed on record, cannot be regarded as the one filed on behalf of Municipal Corporation of Delhi, who admittedly is not a party to the suit.

14. In the first paragraph of the supporting affidavit filed with the written statement, petitioner mentioned her designation as Medical Superintendent of Hindu Rao Hospital. Mere mention of the designation in the affidavit does not convey that the affidavit has been filed on behalf of the MCD. There is a categorical assertion in the affidavit that the written statement has been drafted by the counsel on her instructions. Nevertheless, even if there was a defect in the affidavit, the same is a curable defect and can always be rectified by issuing directions to the petitioner to file fresh affidavit. Simply on this ground, the written statement filed by the petitioner could not have been discarded.

15. Similarly, in case Ms. Vasu Singh had not filed Vakalatnama on behalf of the respondent, she could have simply been told to either file the Vakalatnama on behalf of the petitioner or would have been discharged from the case. A litigant can always appear in person and contest the case. Litigant is at liberty to either contest the case by itself or engage an



advocate. Merely because the Vakalatnama filed was on behalf of the MCD, it cannot be assumed that the written statement filed was also on behalf of the MCD, particularly when, the written statement bears the signatures of the petitioner in her personal capacity.

16. Hence, the impugned order dated 30.09.2024, passed by the learned Civil Judge, cannot be sustained and the same is therefore set aside. However, trial court would be at liberty to direct the petitioner to file an appropriate affidavit. For the inconvenience and delay caused, petitioner is subjected to cost of Rs. 10,000/-, to be paid to the respondent. Since the application under Order 8 Rule 1 CPC filed by the defendant is pending, it is clarified that nothing contained in this order shall amount to any expression on the merits of the said application which the trial court shall decide without being influenced in any manner by the orders passed in the present petition.

17. Petition is disposed of accordingly.

RAVINDER DUDEJA, J.

MARCH 6, 2025

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