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

+ CM(M) 1560/2023, CM APPL. 49200/2023 & CM APPL.
64684/2024

DIVYA

.....Petitioner

Through: Mr. Pradeep and Ms. Saumya
Dwivedi, Advocates.

versus

RENU AHLAWAT & ORS.

.....Respondents

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **27.03.2026**

1. This hearing has been done through hybrid mode.
2. The present petition under Article 227 of the Constitution of India, 1950, seeks the following prayers:-

“(A) Set aside the order dated 27.05.2023 passed by Ld. Family Court, Rohini District Court, Delhi;

(B) Pass any other order as this Hon’ble Court may deem fit and proper in the interest of justice.”

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.”

3. By way of the present petition, the petitioner is seeking setting aside of impugned order dated 27.05.2023 whereby, the application filed on behalf of the petitioner/defendant No.2 under Order VII Rule 11 of the CPC was rejected by the learned Family Court, North District, Rohini Delhi, and her right to file written statement was also closed and her defence was also struck



off.

4. The impugned order was passed in a suit, CS No.17 of 2022, instituted on behalf of respondent Nos.1 and 2/plaintiffs against the petitioner and respondent No.3 for permanent injunction and restraining them from causing any interference in the peaceful living of the plaintiffs/said respondents and from forceful and by illegal trespassing into the suit property, *i.e.*, second floor of property no.A-3, 137-138, situated at Sector-11, Rohini, Delhi. The petitioner is the daughter-in-law of respondent Nos.1 and 2/plaintiffs and wife of respondent No.3/defendant No.1. It is pertinent to note that the right of respondent No.3/defendant No.1 to file written statement has been closed on 26.04.2023 and his defense has already been struck off.

5. Learned counsel for the petitioner submits that the subject suit had arisen out of matrimony and there are other various litigation pending *inter se* the parties before several Courts. It is further submitted that the application under Order VII Rule 11 of the CPC was filed by the present petitioner/defendant No.1 prior to the expiry of the limitation/statutory period to file written statement. It is further submitted that learned Family Court has erred in dismissing their application under Order VII Rule 11 of the CPC, and also, by closing her opportunity to file the written statement and striking her defence. During the course of hearing, learned counsel for the petitioner had submitted that the present petition is being pressed with respect to the closing of the opportunity to file written statement only.

6. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Saleem Bhai & Ors. v. State of Maharashtra & Ors., (2003) 1 SCC 557**, and **R.K. Roja v. U.S. Rayudu & Anr., (2016) 14 SCC 275**, in support of the present petition.



7. *Per contra*, learned counsel for respondent Nos.1 and 2/plaintiff has submitted that learned Family Court has rightly closed petitioner's opportunity to file the written statement inasmuch as the same was not filed within the statutory period. It is further submitted that by prolonging the filing of written statement, the petitioner is trying to delay the process of trial and outcome of the subject suit.

8. Heard learned counsels for the parties and perused the records.

9. Perusal of the record shows that the subject suit, CS No. 17/2022, was instituted on behalf of the respondent Nos.1 and 2 on 07.10.2022. Thereafter, summons were served on the petitioner on 31.10.2022. The subject application under Order VII Rule 11 of the CPC was filed on behalf of the petitioner on 07.11.2022, *i.e.*, prior to the expiry of the limitation period to file written statement under Order VIII Rule 1 of the CPC as provided under law.

10. At this stage, it is apposite to refer to a judgment passed by learned Coordinate Bench of this Court in **South Delhi Municipal Corporation v. Delhi Gurgaon Super Connectivity Ltd. & Ors., 2023 SCC Online Del 222**, wherein, it has been observed and held as under:-

“7. On the merits of the appeal, Mr. Mittal is right in submitting that summons and documents were duly served upon defendant No. 2 by 25.05.2017. The defendant No. 2 had a period of 30 days from 25.05.2017 for filing of the written statement, which would ordinarily have expired on 25.06.2017. However, defendant No. 2 filed I.A. 7663/2017 immediately thereafter. As noted above, the said application was filed under Order VII Rule 11 of the CPC on 03.07.2017. The Court's calendar for the year 2017 shows that the Court reopened on 03.07.2017, after the summer vacation which was from 01.06.2017 to 30.06.2017. Mr. Mittal contends that the Registry was open from 01.07.2017 for filing. Even assuming this to be the



case, the filing of the application under Order VII Rule 11 of the CPC was within the condonable period of 30 days plus 90 days, provided under the Original Side Rules.

8. The two judgments relied upon by Mr. Malhotra support the position that a defendant ought not to be called upon to file the written statement during the pendency of the application under Order VII Rule 11 of the CPC. In *Saleem Bhai*, the Supreme Court has observed as follows:—

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

9. Following this judgment, the Court observed, in paragraph 6 of *R.K. Roja*, that *“liberty to file an application for rejection under Order VII Rule 11 of CPC cannot be made as a ruse for retrieving the loss opportunity to file the written statement”*.

10. In view of the fact that I.A. 7663/2017 was filed by defendant No. 2 on 03.07.2017, as noted above, I am of the view that the application cannot be taken to have been filed by defendant No. 2 as a ruse for retrieving the lost opportunity to file the written statement. The opportunity had not yet been lost, as defendant No. 2 filed I.A. 7663/2017 during the maximum condonable period for filing of the written statement.”



11. In the present case, as noted hereinbefore, the petitioner/defendant No.2 herein had filed an application under Order VII Rule 11 of the CPC on 07.11.2022, *i.e.*, prior to the expiry of the limitation period to file the written statement. Thus, the conduct of the petitioner in filing an application under Order VII Rule 11 of the CPC cannot be taken as a ruse for retrieving lost opportunity to file the written statement as the same could not be stated to be lost. Further, the proceedings *inter se* the parties, in the present case, are arising out of matrimony, and there are other litigations pending amongst them.

12. In view of the aforesaid and peculiar facts and circumstances of the case, the present petition is partly allowed and the impugned order dated 27.05.2023 is set aside to the extent that the right to file written statement on behalf of the petitioner/defendant No.2 was closed and her defense was struck off.

13. The petitioner/defendant no.2 is granted an opportunity to file the written statement within a period of two weeks before the learned Trial Court/learned Family Court in CS No.17 of 2022, with an advance copy to learned counsel for respondent Nos.1 and 2/plaintiffs.

14. Pending applications, if any, also stand disposed of.

15. Copy of the order be sent to learned Judge, Family Court, North District, Rohini, Delhi, for necessary information and compliance.

16. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

MARCH 27, 2026/nk/ns