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

Date of decision:04.08.2023

+ CM(M) 818/2023 & CM APPL. 25443/2023

AJAY SINGH

..... Petitioner

Through: Mr. Manoj Dahiya, Advocate
(Through VC)

versus

ROOP SINGH & ANR.

..... Respondents

Through: Ms. Rashmi Sharma, Advocate for
R-2

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition impugns the order dated 19.10.2022 and 09.02.2023 passed by the ADJ, West District, Tis Hazari Court, Delhi ('Trial Court') in case bearing Suit No. 729/2020 titled as "***Roop Singh v. Sardar Singh & Anr***" whereby, the Trial Court dismissed the application under Order 47 Rule 1 Code of Civil Procedure ('CPC') seeking review of the order dated 14.12.2021.

1.1. The Petitioner is defendant No. 1 and Respondent No. 1 is the plaintiff in the civil suit.

2. The suit has been filed by the plaintiff for declaration, possession and permanent injunction of the property bearing no. 106 VPO Mundka, measuring 126 sq. yds. (21/54) out of Khasra no.370 situated within old Lal Dora (1908-09) of Village and abadi Mundka ('subject property'). A perusal



of the record shows that the Petitioner herein was proceeded *ex-parte* on 14.12.2021.

3. Upon an application being filed by the Petitioner herein, the application was allowed by the Trial Court *vide* order dated 04.08.2022, subject to the Petitioner herein making payment of cost of Rs. 5,000/- to Respondent No. 1. By the same order, the Petitioner was also directed to file his written statement within a period of 30 days with an advance copy to the plaintiff.

4. The Petitioner herein however, defaulted in complying with the order dated 04.08.2022 inasmuch as neither the written statement was filed nor the costs were tendered to the plaintiff. Since no cost were paid and neither a written statement was filed, the Trial Court *vide* order dated 19.10.2022 proceeded *ex-parte* against the Petitioner herein.

5. The Petitioner thereafter made attempts and tendered the cost of Rs. 5,000/- to the counsel for the plaintiff, however, the said costs were repaid by Respondent No. 1 i.e. the Plaintiff on 08.12.2022 to the Petitioner herein .

6. In these circumstances, the Petitioner herein filed an application seeking recall of the order proceeding *ex-parte* against him. However, the said application was dismissed.

7. The learned counsel for the Petitioner states that he is willing to pay compensatory cost to the plaintiff for the delay cause in filing the written statement and tendering the cost.

8. None appears on behalf of the Respondent No. 1, despite advance service.

9. Ms. Rashmi Sharma, Advocate has entered appearance on behalf of the Respondent No. 2. Learned counsel for Respondent No. 2 states that she has been served with an incomplete copy of the paper book and she, therefore, has



no submissions to make on the issues arising in the present petition.

10. This Court has perused the petition and considered the submissions of the Petitioner.

11. In the facts of the present case, the Petitioner has no doubt been negligent in conducting the proceedings and not complying with the orders passed by the Trial Court.

12. It is evident from the records that the Trial Court gave successive opportunities to the Petitioner herein to file his written statement, however, the Petitioner has failed to avail the said opportunities.

13. In the opinion of this Court the impugned orders passed by the Trial Court does not suffer from any infirmity, however, since the matter is pending before the Trial Court and is at the stage of arguments, this Court deems that it would subserve the interest of justice if the defence of the Petitioner are considered and the claim in the suit are decided on merits. It will also preclude arguments of non-consideration of the defence of the Petitioner and save multiplicity of proceedings.

14. In this regard, it would be appropriate to refer to the case of ***Randhir Singh v. Urvashi Suri*** passed by the learned Single Judge of this Court decided in ***CM (M) 717/2023 dated 04.05.2023*** after taking note of the judgments of the Supreme Court and this Court, while considering the issue of closing the right of the defendant to file written statement, held that the effort of the Court is always that disputes should ordinarily be decided on merits. The relevant portion of the said judgment reads as under:

“10. It is beyond cavil that the Supreme Court and the High Court by a catena of judgments have held in deserving cases that the delay in filing the written statement can be condoned, however, subject to a compensatory cost.

*11. The Supreme Court in the judgments of *Bharat Kalra v. Raj Kishan Chabra* reported as 2022 SCC OnLine SC 613, *Salem Advocate Bar Association, T.N v. Union of India*, reported as (2005) 6 SCC 344, *Kailash v.**



Nanhku, reported as (2005) 4 SCC 480 has held that the disputes ordinarily ought to be resolved on merits rather than on technicalities and, therefore, in situations where the trial has not reached advanced stages, it could be possible for the courts to condone the delay so as to ensure that the pleadings are complete and the disputes are resolved on merits.

12. Learned Division Bench of this Court in Jamaluddin v. Nawabuddin Neutral Citation Number - 2023/DHC/001211, has also considered the similar issues which were raised and condoned the delay, subject to compensatory costs.

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14. The petitioner himself is aged about 69 years and this Court cannot overlook the fact that the age coupled with the past medical history of the petitioner/defendant, could have possibly, been the reason for the delay in filing the written statement.”

(Emphasis supplied)

15. The permission to file written statement to the Petitioner is granted on the following terms: -

15.1. The Petitioner will file his written statement within a period of one (1) week accompanied with an affidavit of admission-denial of documents filed by the plaintiff; however, the aforesaid opportunity is being granted to the Petitioner subject to the payment of legal costs of Rs. 50,000/- to Respondent No. 1 i.e., the plaintiff.

15.2. The Petitioner has given an undertaking before this Court that he will not seek any adjournment before the Trial Court and will be duly represented through a counsel on each date of hearing to co-operate in the expeditious disposal of the trial. The said undertaking is taken on record and he is bound down to the same, subject to the compliance of the payment of costs.

15.3. The payment of Rs. 50,000/- shall be paid to Respondent No. 1 i.e. the plaintiff through demand draft, which shall be deposited before the Trial Court on or before 11.08.2023.

16. It is made clear that if the aforesaid conditions are not complied within the time granted by this Court, the liberty granted by this Court shall stand



revoked. No application for extension of time will be entertained.

17. With the aforesaid directions, the present petition is allowed and the orders dated 14.12.2021 and 04.08.2022 proceeded *ex-parte* against the Petitioner herein are set aside in the aforesaid terms.

18. Pending Applications, if any, shall stands disposed of.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

AUGUST 4, 2023/rhc/ms

[Click here to check corrigendum, if any](#)

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