

Case No. 572/16

27.10.2017

Present: Sh. Vijay Awana, counsel for plaintiff with plaintiff.
Defendant in person.

Vide this order I shall dispose of two applications, one filed by plaintiff under order 8 rule 10 CPC on 27.07.2016 for pronouncement of the judgment and decree in view of non filing of the written statement despite service on 30.10.2015 and the other filed by the defendant for condonation of delay in filing the written statement which basically falls under order 8 rule 1 CPC. The application for condonation of delay was filed along with the written statement filed on 24.08.2016.

This is a suit for declaration, partition and cancellation of the Will dated 13.06.2013 and 14.08.2013 and GPA dated 13.06.2013 executed by late Smt. Sati Devi, mother of the plaintiff and defendant in favour of Ashish Kumar, son of defendant. Suit was filed on 06.10.2015 and summons were issued for 28.01.2016 when none appeared for the defendant despite service on 30.10.2015 and case was adjourned for further proceedings on 14.04.2016 which was declared a holiday and case was taken up on 23.04.2016 as none appeared for both the parties. On 14.05.2016, counsel for defendant appeared and sought some time to file the written statement and he was granted two weeks time subject to the objection, if any, on the part of plaintiff in respect of taking written statement on record and direction was given to supply copy of the same to the opposite party also. Case was adjourned for 27.07.2016 and parties were also directed to appear in person. Vide order dated 08.06.2016 of Ld. District Judge, this case pending in the Court of Sh. V. K. Goel, the then Ld. ADJ(East) as well as a case titled Ashish Kumar Vs. Hazari Lal pending in the court of Sh. Anurag Sain, the

then Ld. ADJ(East) were transferred to this court with direction to the parties to appear the court on 10.06.2016.

On 10.06.2016, plaintiff appeared in person, none appeared for defendant and the case was adjourned for 24.08.2016 when written statement alongwith documents and application for condonation of delay was filed. It appears that the date of 27.07.2016 was impliedly cancelled after transfer and fixing of this case by Ld. Predecessor before the transferee court on 10.06.2016 for 24.08.2016. The application under order 8 rule 10 CPC was filed by the plaintiff on 27.07.2016.

During the course of arguments, Ld. Counsel for plaintiff submitted that there has been no explanation for the delay upto 30.03.2016 and the explanation is for the period from 30.03.2016 onwards and relied upon the judgment Mohammad Yusuf Vs. Faij Mohammad & Ors., Civil Appeal No. 7209 of 2008 (Arising out of SLP (c) No. 3311/2008), decided on 02.12.2008, by Hon'ble Supreme Court of India and Aditya Hotel (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. & Ors., Civil Appeal No. 1572 of 2007 (Arising out of SLP (c) No. 7644 of 2006), decided on 26.03.2007, of Hon'ble Supreme Court of India for dismissal of the application for condonation of delay and for pronouncing the judgment on his application under order 8 rule 10 CPC.

In Aditya Hotel judgment relied upon by the plaintiff, there was a delay of 142 days and as the delay was condoned without any explanation, howsoever brief, it was remitted to the court to consider it afresh. In Mohd. Yusuf judgment, the delay was of about three years and does not apply to the facts and circumstances of this case. It is important to note that “procedural law is handmaid of justice” is the cardinal principle and the time period provided in the order 8 CPC is directory in nature. I am also conscious of the fact that incorporation of the time period is with a view to expedite the

proceedings and encourage the litigants to the same as it might result in case of there being no proper explanation in the given facts and circumstances to the rejection of the written statement in the given facts and circumstances to the rejection of the written statement on account of delay.

This is a suit amongst family members. Contention of defendant cannot be rejected at the threshold and he ought to be afforded an opportunity to contest it on merits. The circumstances stated in the application from 30.03.2016 onwards is illness of the defendant and his daughter at their native village at West Champaran, Bihar. It is important to note that parties were litigating earlier also in other case including one probate and there was pendency of consolidation application also as referred above. Looking into the nature of relationship of the parties, nature of the suit, I am of the considered opinion that it is a fit case where the delay should be condoned by imposition of cost. The application is allowed subject to cost of Rs. 10,000/-.

Put up for payment of cost by defendant, filing replication as well as for admission denial of documents, settlement of issues on 04.01.2018.

(VIPIN KUMAR RAI)
Additional District Judge-03
East District/KKD Courts/Delhi
27.10.2017