

CS No.293/16

20.12.2016

Pr: Shri Israr Ahmed, Ld. Counsel for the plaintiff along with plaintiff in person.

Shri M.S. Rawat, Ld. Counsel for both the defendants along with both the defendants are in person.

On behalf of the defendants, an application has been moved for condonation of delay in filing the written statement.

Ld. Counsel for the plaintiff submits that he does not wish to file any reply to the application.

Arguments have been on both the applications.

It has been submitted on behalf of the plaintiff that the defendants were served on 18.11.2015, however, the written statement was filed only on 23.01.2016 i.e. after delay of 67 days and till the last date no application for condonation of delay was moved and only today the application for condonation of delay has been filed which is also not giving any plausible reason for the delay caused in filing the written.

Ld. Counsel for the defendants has stated that the delay in filing the written statement was neither deliberate nor intentional and it was due to bona fide reasons that the written statement could not be filed in time. He has also pointed out to the conduct of the Ld. Counsel for the plaintiff in delaying the application under Order VIII Rule 10 CPC. Ld. Counsel for the defendant has also placed reliance on **Kailash vs Nankhu & Ors., AIR 2005 SC 2441**, wherein the Hon'ble Court observed as under:-

“The provisions of O. 8 R. 1 fixing the schedule for filing of written statement are directory and not mandatory. The purpose of providing the time schedule for filing the written statement under O. VIII R.1 CPC is to expedite and not to scuttle the hearing. The Provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to R.1 of O.VIII of the CPC is couched in negative form, it does not specify any penal consequence flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by O.VIII R.1 of CPC is not completely taken away.”

No doubt, the court has discretion to extend the time for filing the written statement in case there is any bonafide ground. However, each case has to be judged on its own merits. In the application it is stated on behalf of the defendants that the defendants could not properly keep a track due to their old age and it is also stated that since the court was on leave on 20.11.2015, it was not known that the written statement was to be filed.

From the record it is revealed that the Counsel for the defendants had appeared on 20.11.2015 and he knew it well that the written statement was to be filed within limitation. The written statement was filed only on 23.01.2016, though it was to be filed within 30 days. Ld. Counsel for the defendants has submitted that the defendants are about

70 years of age and are suffering from blood pressure, thyroid etc. However, neither it is mentioned in the application nor any document is placed on record. However, considering the fact that grave prejudice would be caused to the defendants if the written statement is not taken on record, I allow the application under Order VIII Rule 1 CPC subject to cost of Rs.2500/- to be paid by the defendants to the plaintiff. Written statement shall be taken on record only subject to payment of cost of Rs.2500/-. Application under Order VIII Rule 1 CPC is also disposed of in view of the aforesaid observations.

Replication be filed within one month from today with an advance copy to the other side.

Put up for payment of cost of Rs.2500/- by the defendants to the plaintiff as also for replication, admission-denial and framing of issues for 30.03.2017.

(Nisha Saxena)
ADJ-03(E):KKD
20.12.2016

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