

IN THE COURT OF SH. KISHOR KUMAR, DISTRICT
JUDGE-04, NORTH DISTRICT, ROHINI COURTS, DELHI.

CS No. 59087/2016
CNR No: DLNT01-001573-2015

Manoj Gulia

..... Plaintiff

VERSUS

Smt Krishna Khatri and Ors.

.....Defendants

Date of Institution of the case	:	09.04.2015
Date of Order	:	12.08.2024
Decision	:	Application allowed.

Order on application filed on behalf of the defendants u/o VIII
Rule 2 r/w Section 151 CPC r/w Section 5 of Limitation Act and
Order on application u/o VIII Rule 1 and 10 CPC filed on behalf
of plaintiff

1. Vide this order, the application filed on behalf of the defendants u/o VIII Rule 2 r/w Section 151 CPC r/w Section 5 of Limitation Act dated 09.11.2015 shall stands disposed of. The fate of this application shall decide the fate of another application filed on behalf of the plaintiff u/o VIII Rule 1 and 10 CPC dated 28.07.2015 for striking of the defence of the defendants for not filing the written statement in time and for pronouncing judgment.

2. By way of the former application u/o VIII Rule 2 CPC, the defendants are praying for condonation of delay in filing the

written statement and for taking the same on record on the ground that their written statement was ready on 06.07.2015. However, the same could not be filed on record as the court was on leave and that the plaintiff refused to receive the advance copy thereof that day. The defendants have filed the written statement on 20.08.2015 when the court was further on leave.

3. Reply to the application u/o VIII Rule 2 CPC has been filed on behalf of the plaintiff praying for its dismissal on the ground that no sufficient reasons have been assigned by the defendants for not filing the written statement within time.

4. On the other hand, by way of the application u/o VIII Rule 1 and 10 CPC, the plaintiff is praying for striking of the defence of the defendants and to pronounce judgment forthwith.

5. Reply to the application u/o VIII Rule 1 and 10 CPC has been filed on behalf of the defendants praying for its dismissal being not maintainable as the written statement could not be filed within time for the justifiable reasons for which the defendants filed application u/o VIII Rule 2 CPC.

6. I have heard ld counsel for the defendants, ld counsel for the plaintiff and have carefully gone through the record.

7. The present case has been filed and came up for hearing first time before the court on 09.04.2015 and the court ordered for issuance of summons to defendants for 20.04.2015. All the

defendants have been served on 09.04.2015. On 20.04.2015, instead of filing the written statement, an application has been filed u/o VII Rule 11 CPC. The Court ordered for filing reply to the application u/o VII Rule 11 CPC and for arguments on dated 06.07.2015. On 06.07.2015, the Court was on leave and the matter was posted for 20.08.2015. On 20.08.2015, defendants filed their written statement. In between, on dated 29.07.2015, the application u/o VIII Rule 1 and 10 CPC has been filed on behalf of the plaintiff for striking of the defence of the defendant for not filing the written statement and for pronouncing judgment. Sensing that no adverse order is passed against the defendants, they filed written statement on 20.08.2015.

8. As per the provisions of Order VIII CPC, the defendants were supposed to file their written statement within 30 days from service of summons i.e. by 09.05.2015 and at the most, further 60 days time could have been granted to the defendants to file their written statement i.e. uptill 09.07.2015. However, the written statement has been filed on 20.08.2015. Therefore, after counting the maximum 90 days, there is delay of about 40 days in filing the written statement by the defendants.

9. Further, the Hon'ble Apex Court in the Landmark Judgment **Kailash v. Nanhku Kailash v. Nanhku (2005) 4 SCC 480** held that:

“the defendant to the civil suit deserves to be punished with the cost to deter them from seeking unjustified extension of time in filing written statement and to compensate the plaintiff for the delay and inconvenience caused to him.

The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel.

The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

10. I have carefully gone through the application filed on behalf of the defendants u/o VIII Rule 2 CPC and find that though no sufficient reasons have been assigned by the defendants for not filing the written statement within 90 days in the worst scenario and further that there is no explanation for further delay period of 40 days above 90 days, however, still in the interest of justice, this Court is of the considered opinion that since very valuable rights of the defendants are involved in the present case, the written statement filed on behalf of the defendants on 20.08.2015 is hereby taken on record and their application u/o VIII Rule 2 CPC dated 09.11.2015 is hereby allowed, subject to cost of Rs.5,000/-.

11. Consequently, the application of the plaintiff u/o VIII Rule 1 and 10 CPC dated 28.07.2015 stands dismissed.

Announced in Open Court

On Dated 12.08.2024.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/12.08.2024