

IN THE COURT OF GAURAV : DISTRICT JUDGE-01
SHAHDARA DISTRICT, KARKARDOOMA COURTS:
DELHI

CS No. 80/2023

In the matter of:-

Vaishali And Ors.

.....Plaintiffs

Versus

Maya @ Maya Devi And Ors.

.....Defendants

03.12.2024

ORDER

1. Vide this common order I shall dispose off two separate applications filed by defendant no. 1 to 4 i.e. Application for recalling of order dated 22.05.2023 under section 151 r/w under order VIII Rule 1 Civil Procedure Code, 1908; for filing of written statement and another, Application under section 5 of Limitation Act, 1963 r/w 151 seeking condonation of delay in filing written statement.

2. The Ld. Counsel for plaintiff has filed an reply to the aforesaid applications, denying all the assertions made therein and has prayed for dismissal of the said application with costs.

3. Arguments on the aforesaid applications were heard at length on behalf of the parties and carefully, perused the record.

4. Ld. Counsel for defendant submitted that defendant no. 1 to 4 were served on 17.02.2023 but they filed their written statement before this court on 22.05.2023. He further submitted that defendants being laymen and were not aware about the time limit to file the written statement, resultantly, they contacted their counsel on 19.05.2023 in order to contest their case.

5. He further submitted that one suit bearing CS No. 361/2022, titled as “Vaishali Vs. Indian Bank and Ors.” is also pending before the court of Ms. Ravinder Bedi, ADJ, Delhi; and the said defendants were in the impression that the documents were received by the said defendants, are related to the aforesaid case, in which they had already filed their written statements.

6. He further submitted that defendant no. 2 is the true owner of the suit property, who has invested his hard earned money in the suit property and therefore, the valuable defence of such defendants cannot be whittled down due to their limited knowledge of law. At the end, it is prayed that the order dated 22.05.2023 may kindly be recalled whereby the written statement filed by D1 to D4 was taken off record and their defence was struck off.

7. Per contra, Ld. Counsel for plaintiff vehemently opposed the aforesaid applications and contended that the aforesaid defendants have totally failed to point out any error in the order

dated 22.05.2023 passed by Ld. Predecessor of this Court. Therefore, the same is correct as per law.

8. He further contended that the plaintiffs have already filed one suit for possession and declaration against the defendant no. 1 and 2, which is still pending adjudication before the concerned Court, therefore, it is beyond imagination that the said defendants had allegedly contacted their counsel on 19.05.2023, when the said defendants were admittedly served with the summons of the present suit on 17.02.2023.

9. He further contended that the said defendants have already been availing the services of Advocate in the aforesaid suit as filed by the plaintiffs against the defendants, therefore, the assertion as made by the defendants are totally false, baseless and beyond truth.

10. I have heard the rival contentions of Ld. Counsels for the parties and carefully, perused the record.

11. As per the Order VIII Rule 1 Civil Procedure Code, 1908, if the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, but which shall not be later than ninety days from the date of service of summons along with reasons to be recorded in writing.

12. The time limit for filing the written statement are governed specifically by Order VIII, Rule 1, Civil Procedure Code, 1908.

Therefore, the provision of Section 5 of the Limitation Act, 1963, do not directly apply to the filing of written statements. Resultantly, the said defendant's reliance on Section 5 of the Limitation Act is misplaced and hence, not maintainable in law. Therefore, the aforesaid application under section 5 of Limitation Act, 1963, is hereby dismissed as non-maintainable. **The same is disposed of accordingly.**

13. As far as, another application is concerned, perusal of the record reveals that the said defendant no. 1 to 4 were duly served on 17.02.2023 but they filed their written statement on 22.05.2023 i.e. after passing of about 94 days from the date of service of summons. The said defendants have failed to give any sufficient reason in filing the written statement belatedly, the only reason mentioned in the aforesaid application is that the said defendants being the lay man, were not aware about the time limit to file written statement, which is not a convincing reason to set aside the order dated 22.05.2023 and to condone the delay in filing the written statement as admittedly, they were already availing the services of an Advocate in aforesaid suit bearing CS No. 361/2022, titled as "Vaishali Vs. Indian Bank and Ors.", therefore, they should have filed the written statement within stipulated period, which is not done in the present suit.

14. From the above-said discussion, I finds substance in the contentions raised by the Ld. Counsel for Plaintiff's and there appears to be no sufficient ground to allow the aforesaid application of the said defendants under section 151 r/w under order VIII Rule 1 Civil Procedure Code, 1908, for filling of

written statement. However, at the same time, it is settled law that the delay can be condoned subject to imposition of cost upon the defendant, as, if the defendant is not allowed to contest the present suit, then he shall suffer irreparable loss and injury which cannot be compensated in terms of money. Even otherwise, the procedural rules should not be used to obstruct justice, and every effort must be made to decide cases on their merits rather than technicalities. Moreover, the court must balance procedural time limit with principles of natural justice. The objective of procedural law is to ensure a fair trial, not to penalize a party for procedural delay, unless mala-fide intent or gross negligence is evident.

15. Therefore, in view of above-said discussion and findings and also considering the fact that the present suit is at initial stage and issues are yet to be framed, the application filed by the said defendants u/s 151 r/w under order VIII Rule 1, Civil Procedure Code, 1908, is hereby allowed, subject to costs of Rs.12,000/- upon the defendant no. 1 to 4, out of which Rs. 9000/- (Rs. 3000/- each) shall be paid by the defendant no.1 to 3 to the plaintiffs (Rs. 3000/- each plaintiff) on next date of hearing and the rest of Rs. 3000/- shall be deposited by the defendant no. 4 with Shahdara Bar Association, KKD, Delhi. The defendant no. 4 is also directed to place the receipt of deposit of aforesaid cost of Rs.3,000/- with Shahdara Bar Association on judicial file on or before next date of hearing.

16. Order dated 22.05.2023, whereby the written statement of the defendant no. 1 to 4 were taken off the record and their

defense were struck off, shall be recalled and the delay in filing the written statement of defendant no. 1 to 4 shall be condoned and their written statement shall be taken on record, subject to payment of aforesaid cost. **The said application is also disposed of accordingly.**

(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI/03.12.2024.