

09.05.2019

Present: Advocate Shri Manish Tanwar for plaintiff.
Advocate Shri Rajender Soni for defendant.

An application under Order VIII Rule 1 read with Section 151 CPC and Section 5 of Limitation Act has been filed by defendant's counsel for condoning delay in filing written statement. Copy supplied to plaintiff's counsel.

Submissions heard.

Defendant's application is strongly opposed by plaintiff's counsel by stating that application for leave to defend was allowed on 10.12.2018 directing defendant to file written statement within 30 days which was however filed on last date on 27.02.2019 beyond 30 days as directed by the Court.

Ld. Counsel for defendant, per contra, submits that written statement could not be filed within 30 days as defendant could not come to Delhi for consulting his counsel before 08.01.2019 due to illness of daughter and wife who were being treated at District Headquarter, Basti.

It is well settled law that sufficient cause should be interpreted liberally so as to advance substantial justice when no negligence, nor inaction nor want of bonafides is imputable as held by Hon'ble Supreme Court of India in case titled ***Shakuntala Devi Vs. Kuntal Kumari & Ors.*** AIR 1969 SC 575.

Further, it is apt to note that Hon'ble Supreme Court of India in case titled ***Zolba vs. Keshao & Ors.*** AIR 2008 SC 2099 has held that Order

VIII Rule 1 CPC is not mandatory and it would be open to the Court to permit the appellant to file his written statement, if exceptional circumstances have been made out.

Since defendant is a resident of Basti, U.P. and submits that he could not consult his counsel at Delhi as he was looking after his wife and daughter so **application under Order VIII Rule 1 read with Section 151 CPC and Section 5 of Limitation Act is allowed** and written statement of defendant is taken on record.

Advance copy of replication, if any, be supplied to defendant's counsel two weeks prior to next date of hearing and matter is adjourned to **31.07.2019 for examination of parties and settlement of issues.**

(Tarun Yogesh)
ADJ-03 : Dwarka Courts
Delhi/09.05.2019