

26.03.2024

Present: Sh. Markandey Gupta, ld. counsel for the plaintiff through V.C.
Sh. Amit Kumar, ld. counsel for the defendant no. 1 & 3
alongwith defendant no. 1 & 3.

In the present case, the D-1 has been served on 31.07.2023 but the D-3 was unserved for the date of 13.10.2023, however, ld. counsel has appeared on behalf of D-1 & D-3 on 13.10.2023. The written statement on behalf of D-1 & D-3 was filed on 04.10.23. Ld. counsel for the defendants has moved an application u/o 8 rule 1 CPC read with u/s 5 of Limitation Act. Ld. counsel for the defendants submits that after service of D-1, D-1 approached D-3 for engaging a counsel. However, the D-3 was desired to relinquish her share in favour of his brother D-1 and she executed the Relinquishment Deed on 26.09.2023 and due to above said facts defendants could not file the written statement within 30 days. Ld. counsel for the defendants prays to the court in filing the written statement.

ld. counsel for the plaintiff opposes the said request and prays that D-3 at least could have filed the written statement within 30 days. Ld. counsel further submits that there was no need to execute Relinquish Deed and D-3 could file NOC in the court. He further submits that no medical document has been filed on record. Heard. Case file perused.

There is no service report regarding service of D-3, and the written statement has been filed on behalf of D-3 before the date of his appearance through counsel in the court. The written statement filed on behalf of D-1 is within 90 days from the date of his service. Considering

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the above said facts, and the settled law the procedure law should not defeat the substantive rights of the parties and the rights of the parties should be decided on the basis of the merits. The delay in filing the joint written statement on behalf of D-1 & D-3 is condoned subject to cost of Rs. 1500/- to be paid to the plaintiff. Application u/o 8 rule 1 read with section 5 of Limitation Act is disposed off accordingly.

Put up for completion of pleadings, filing of affidavit in respect of A/D of documents on behalf of both the parties and framing of issues on 15.07.2024.

(SHIV KUMAR)
ADJ-02, West Distt.Tis Hazari Courts
Delhi: 26.03.2024