

PREETI TRIPATHI Vs. RESIDENT DOCTORS ASSOCIATION

16.10.2023

This case has been listed before the undersigned for the first time since the undersigned has joined the present posting on 31.08.2023.

Present: Sh. Mohit, Ld. Counsel for the plaintiff.

Ms Vanshika Kandailwal along with Sh. SK Nanda, Ld
counsel for Defendant.

Ld counsel for the defendant submits that there is a delay of 9 days in filing the WS. Ld counsel further submits that WS could not be filled within 30 days as defendant being a doctor, was busy in numerous emergency cases due to which he could not brief his counsel regarding the present matter. Ld counsel submits that the delay is not intentional on the part of defendant and request the court to condone the delay in filing the WS.

Ld counsel for the plaintiff oppose the request of the defendant and prays the court not to condone the delay in filing the WS and submits that the defendant was served on 19.08.2023 and there is delay of about 17 days for filing the WS. Ld. Counsel for the plaintiff submits that defendant has not explained the delay properly from his service dated 19.08.2023 till filing of WS dated 07.10.2023 and submits that defendant has mentioned wrong date of service i.e. 23.08.2023 and has not explained the entire period of delay in filing the WS and submits that application is bad in law as entire period is not mentioned as per Section 5 of the Limitation Act and request the court not to take the WS of defendant on record.

Submissions heard.

As per report of the ahlmad defendant was served on 19.08.2023. The defendant has filed WS on 07.10.2023.

Hon'ble Supreme Court of Delhi in the case title as “Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75 Supreme court has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause to injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

Though, the defendant has not mentioned the correct date of service and nor specify the entire period of delay for condonation of delay, considering the fact that the delay is only of 17 days and the defendant has taken the reasons for not filing the WS within 30 days due to his being a doctor and busy in emergency cases and could not be able to brief his counsel regarding the present matter and considering the interest of justice and keeping in view the mandate of law that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice, the delay in filing the written statement is condoned subject to cost of Rs. 3,000/- to be paid to the plaintiff and the written statement is taken on record, Subject to payment of cost.

Arguments heard on behalf of both parties on the application U/o 39 Rule 1 and 2 CPC.

Interim stay granted vide order dated 23.08.2023 is extended till NDOH.

Put up on **10.11.2023** for orders.

(SHIV KUMAR)

ADJ-02, West Distt.Tis Hazari Courts

Delhi:16.10.2023(S)