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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 179/2014**

SURINDER SINGH REKHI

..... Plaintiff

Through: Ms. Swati R. Singh, proxy counsel for
Ms. Rachna Agrawal, Adv.

versus

DR. T.S. REKHI & ORS

..... Defendant

Through: Mr. Vikas Sharma, Adv. for D-8 (b)

CORAM:

**SH. VIJAY SHANKAR (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER
% **24.11.2018**

**I.A.No. 10326/2018 under Order 8 Rule 1 CPC r/w Section 5 of
Limitation Act filed by defendant no.9 seeking condonation of delay of
1527 days**

By way of present order, I shall dispose of application of the defendant no.9 under order 8 Rule 1 CPC read with Section 5 of the Limitation Act. In the present application, the defendant no.9 has prayed for condonation the delay of 1527 days in filing the written statement.

Brief facts necessary for just adjudication of the present application, as stated in the application, are that the defendant no.9 received the summons in the present suit and thereafter, she got her appearance entered on 05/05/2014. The defendant no.9 was diagnosed with *Rheumatoid*



Arthritis in the early 1990s and she also underwent an operation of her *Gallbladder* and since last 15 years, she has been in a very frail health and she has been confined to bed with other multiple ailments. In the year 2017, she was hospitalised for having *Duodenal Ulcers*. Owing to her ailments and frail health, she was not able to prosecute the matter and even lost track about the pendency of the suit being troubled with her physical condition. Due to multiple health issues on many occasions, she has been bedridden for many days at a stretch. Due to her medical condition and frail health, defendant no.9 could not engage the counsel after receipt of summons in the suit and did not appear in the matter from the year 2015 to the beginning of the year 2018. It was only on receipt of IA No. 1512/2017 in terms of order dated 12/03/2018, the defendant no.9 got recalled the pendency of the present suit. Thereafter, the defendant no.9 engaged the counsel, who after filing vakalatnama on 25/04/2018, under her instructions, applied for the complete records of the case. However, due to some objections, the vakalatnama was required to be re-filed on 02/05/2018. After examining the contents of the plaint, the defendant no.9 instructed her counsel for file the written statement. It was owing to her frail health, the defendant no.9 could give instructions only in the month of June. Immediately thereafter, the written statement was drafted and filed without any further delay. There is a delay of 1527 days in filing the written statement and delay is neither deliberate nor *malafide* but beyond the control of the defendant no.9. Pleadings are yet to be complete and no prejudice would be caused, if the present application is allowed. The defendant no.9 shall suffer irreparable loss and injury, if the orders prayed for are not granted in favour of the defendant no.9 and same cannot be compensated in



terms of money. Counsel for the defendant no.9, in support of his contentions, has relied upon the judgments titled as “*Saroj Bhutani Vs. Harjeet Singh & Ors. (2015 IX AD (DELHI) 42)* and “*Krishna Devi Vs. Manju Yadav, (2012 IX AD (DELHI) 441)*”

On 09/08/2018, it was submitted by counsel for the plaintiff that she does not wish to file reply of the aforesaid application but she opposed the same. Counsel for the plaintiff, in support of her contentions, has relied upon the judgment of Hon’ble Supreme Court passed in the case titled as “*Mohammed Yusuf Vs. Faij Mohammad & Ors. (Civil Appeal No. 7209/2008, decided on 02/12/2008)*”

During the course of the arguments, it was submitted by counsel for the plaintiff that the present application is not maintainable and same is highly belated and no sufficient ground has been mentioned by the defendant no.9 in the present application for delay in filing the written statement and the present application be dismissed.

Arguments already heard on the aforesaid application of the defendant no.9. Perused the material available on record.

By way of present application, the defendant no.9 is seeking condonation of delay of 1527 days in filing the written statement. It is well settled law that for condoning the delay in filing the written statement, the delay should not be because of lack of *bonafide* or negligence or inaction on the part of the defendant.

The present suit was filed by the plaintiff in January, 2014. The present application has been filed by the defendant no.9 on 12/07/2018 and re-filed on 27/07/2018. Written statement stated to be filed by the defendant



no.9 on 12/07/2018. It is admitted by the defendant no.9 in the present application that the summons of the suit was received and she got her appearance entered on 05/05/2014. Order-sheet dated 05/05/2014 reflected the appearance of son of the defendant no.9. There are appearances of counsel for the defendant no.9 on 20/07/2017 and thereafter on 23/05/2018. The appearances on behalf of the defendant no.9 on 05/05/2014, 20/07/2017 and 23/05/2018 show that she was having the knowledge of the present case. Despite knowledge, the defendant no.9 has not filed the written statement within statutory period. It is the contention of the defendant no.9 that the written statement could not be filed within statutory period due to her ill-health. The defendant no.9 has filed a copy of discharge summary wherein date of admission of defendant no.9 is mentioned as 11/05/2017 and the date of discharge has been mentioned as 15/05/2017. No other medical record/certificate has been filed by the defendant no.9 to show that she was not well from the date of receiving of summons till the date of filing the present application/written statement. In the present case, admission/denial of the documents has already been conducted on 09/03/2016 and vide order dated 20/07/2017, the matter was fixed for framing of issues. No sufficient ground has been mentioned by the defendant no.9 in the present application for not filing the written statement within statutory period as prescribed in the Code of Civil Procedure, 1908. Considering the facts, circumstances and in view of the submissions made, the aforesaid application of the defendant no.9 is dismissed. No order as to costs.

IA stands disposed of.



I.A. No. 15127/2017 under Order 22 Rule 4 r/w Section 151 CPC for impleadment of LRs of deceased defendant no.6

At joint request, put up for arguments on the aforesaid application on
15th January, 2019.

**VIJAY SHANKAR (DHJS)
JOINT REGISTRAR (JUDICIAL)**

NOVEMBER 24, 2018/nk