



\$~6

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 662/2021

ASHA & ORS.

..... Plaintiffs

Through: Mr. Brijesh Yadav, Adv.

versus

RAJBALA & ORS.

..... Defendants

Through: Mr. Bhanu Sanoriya, Adv. for D-1 to 3 (joined through VC)

Mr. Satish Kumar, Adv. for D-5 with D-5 in person

Mr. Karanpreet Singh, proxy cl. for D-6 (joined through VC)

CORAM:

JOINT REGISTRAR (JUDICIAL) MS. PRIYA MAHENDRA, (DHJS)

ORDER

%

19.03.2024

CS(OS) 662/2021

1. In the present case, the defendant no.5 has not taken requisite steps to bring the Condonation of delay application in filing Written Statement on record till date. As per the office noting dated 04.03.2023, the defendant no.5 has filed an application for condonation of delay application in filing the Written Statement but the same was not listed for hearing. Thereafter, repeated opportunities have been given to the defendant no.5 to bring the said condonation of delay application on record but to no avail. Due to repeated non-compliance on behalf of the defendant no.5, even cost of Rs.1500/- was imposed upon the defendant no.5 vide order dated 20.12.2023 and thereafter, defendant no.5 was given last and final opportunity to take requisite steps within ten working days to bring said condonation of delay application on record. The proof of deposit of said cost has been filed by learned counsel for the defendant no.5 and the same is taken on



record. However, again requisite steps have not been taken by the defendant no.5 to bring the said Condonation of Delay application on record. It is stated by learned counsel for the plaintiff that he has filed reply to said condonation of delay application but the same has not come on record as the application filed by the defendant no.5 is still lying under objections.

2. In the first call, learned counsel for the defendant no.5 stated that he has received intimation from the registry that the application filed by him vide diary no.704/2023 is listed today for hearing. In view thereof, learned counsel for the defendant no.5 was directed to produce e-log of the defects notified by registry in respect of the said condonation of delay application so as to ascertain nature of defects and the date when the same were removed by the defendant no.5. The learned counsel for the defendant no.5 has sought passover for the same. Even after the pass over, the learned counsel for the defendant no.5 has not produced copy of requisite e-log. Learned counsel for the plaintiff has vehemently argued that it is only a ploy on behalf of the defendant no.5 to delay the case of the plaintiff. He also submits that even otherwise the Written Statement was filed by defendant no.5 beyond maximum permissible period of 120 days and strongly argues for closing the right of defendant no.5 to file Written Statement.

3. Heard and record perused. It appears that the defendant no.5 has not come to the court with clean hands and therefore, not rendering proper assistance. As per office note available on record, the defendant no.5 first



filed Written Statement on 15.07.2022 with diary no.1175192/22 but did not pursue it after it was returned under objection. The Written Statement alongwith Affidavit of Admission/Denial of the documents was then filed by the defendant no.5 on 02.01.2023 in the present matter which is on record but defendant no.5 has not taken requisite steps to bring application seeking condonation of delay application in filing Written Statement on record till date despite repeated opportunities. So, I find no ground to give further opportunity to the defendant no.5. Thus, no application seeking condonation of delay in filing Written Statement by defendant no.5 is on record.

4. It be also noted that the defendant no.5 has been served with summons on 07.04.2022 but the Written Statement has been filed by defendant no.5 only on 02.01.2023 for which no application seeking condonation of delay in filing Written Statement is on record. It is mandatory to be filed as per law, as apparently the Written Statement has not been filed by defendant no.5 within stipulated period of limitation of 30 days of service of summons. On this ground alone, the defence of the defendant no.5 deserves to be struck off. Even otherwise, in ***Ms. Charu Agarwal Vs. Mr. Alok Kalia & Ors.***, 2023/DHC/001454, the Hon'ble Court of Delhi clearly held that as per Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, the defendant is not entitled to file Written Statement beyond 120 days in any circumstances whatsoever in view of language employed in Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules. The maximum permissible period of 120 days for filing



Written Statement on behalf of the defendant no.5 has already expired on the date of filing of Written Statement alongwith Affidavit of Admission/Denial of the documents i.e. 02.01.2023. Hence, Written Statement filed by defendant no.5 is directed to be taken off the record.

5. As per record, Written Statement alongwith Affidavit of Admission/Denial of the documents filed by the defendant no.1 to 3 has already been taken on record on 01.08.2023 and right of the plaintiff to file Replication to the same by the plaintiff has already been closed vide order dated 05.10.2023.

The right of the defendant no.4 to file Written Statement has already been ordered to be forfeited.

The plaintiff is directed to file soft copy as well as physical copy of Joint Schedule of the documents within three weeks with copy to the opposite side.

Re-notify the matter for completion of pleadings/further proceedings on 26.07.2024.

PRIYA MAHENDRA (DHJS)
JOINT REGISTRAR (JUDICIAL)
MARCH 19, 2024/ab

[Click here to check corrigendum, if any](#)