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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 664/2023

ANOOPI SINGH YADAV & ORS.

.....Plaintiffs

Through: Mr. Mohit Mudgal & Mr. Ravi
Kant Yadav, Advs.
(Mob.8826733076)

Versus

MANGI RAM & ORS.

.....Defendants

Through: Mr. Vikas Yadav & Mr. Rupal
Yadav, Advs. for D-1
(Mob.9971920505)
Mr. Sandeep Yadav & Mr.
Shubham Yadav, Advs. for D-2
to 7 (Mob.9818637450)
Mr. Varun Mudgil & Mr. Rakesh
Kumar, Advs. for D-8 to 10
(Mob.9711960086)

CORAM:

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

ORDER

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23.07.2024

**IA No.8570/2024 under Section 151 CPC moved by
defendant no.1 seeking condonation of delay in filing
Written Statement; and**

**IA No.8572/2024 under Section 151 CPC moved by
defendant no.1 seeking condonation of delay in re-filing
IA No.8570/2024**

1. Pleadings qua captioned IAs are already complete.
2. Arguments already heard.
3. The defendant no.1/applicant has stated that there is delay of 106 days in re-filing the Written Statement for which condonation of delay is sought in IA no.8570/2024 and he has also filed an application bearing IA no.8572/2024 seeking further condonation of delay of 41



days in re-filing the IA no.8570/2024. It is stated in the application that the office of the counsel for the applicant/defendant no.1 is situated in a common hall in Lawyer's Chambers Block situated at Dwarka Court Complex and by the order of Ld. Principal and District Judge, South-West, New Delhi, all common halls are subjected to renovation. It is stated that because of shifting of the file, the documents of the present case got misplaced and were only found after considerable efforts and that caused delay in re-filing the Written Statement. Further, it is stated that the documents filed alongwith Written Statement are voluminous with minute entries. So, the same could not be got typed within time and this also caused the delay in filing documents alongwith Written Statement. Learned counsel for the applicant/defendant no.1 submits that in view of the same, the delay in re-filing the Written Statement is caused for the reasons beyond his control and the delay in filing Written Statement with documents is neither intentional not deliberate.

4. *Per contra*, learned counsel for the plaintiff has vehemently argued that the applications filed by the defendant no.1 is nothing but gross abuse of the process of law. It is stated that the defendant no.1 is guilty of suppression and has not approached the court with clean hands. The defendant no.1 has failed to furnish any plausible reason, let alone exceptional and unavoidable reason, for condoning the inordinate delay in re-filing the Written Statement. It is further urged that even the Written Statement has not been filed by the defendant no.1/applicant within the statutory period of 30 days from



the service and there is a delay of 12 days in filing the Written Statement by defendant no.1 as the same was filed only on 03.12.2023. Despite the same, no application has been filed by the defendant no.1/applicant seeking condonation of delay. So, it is stated that on this ground alone, IA no.8570/2024 deserves dismissal.

4.1 It is further stated that admittedly, the defendant no.1 filed the Written Statement on 03.12.2023 vide diary no.E-2177441/23 which was only a bogus filing aimed at solely obtaining the diary number, and the real filing was done by the defendant no.1 only on 28.02.2024 which exceeded 120 days from the date of service of the summons of the suit upon the defendant no.1. He submits that even no document has been filed by defendant no.1 on 03.12.2023 and the documents were filed for the first time only on 28.02.2024. It is again beyond 120 days from the service of suit upon the applicant. It is further stated that the applicant in IA No.8570/2024 in the prayer clause has given arbitrarily figure of 106 days without furnishing any details/calculations.

4.2 It is also stated that in order to hoodwink the plaintiff, the defendant no.1 intentionally has not been doing compulsory advance service of copy of Written Statement alongwith legible copy of the documents to the ld. Counsel for the plaintiff. Even the order of this court dated 05.12.2023 was not complied with by defendant no.1 and the learned counsel for the applicant retracted from his undertaking given in the court on 05.12.2023 that he would supply copy of Written Statement to learned counsel for the plaintiff within two days. It was supplied to learned



counsel for the plaintiff on 22.02.2024 after 123 days of receiving of summons of the suit. It is further stated that in view of dilatory tactics of learned counsel for the defendant no.1, this court even forfeited the right of the defendant to file Affidavit of Admission/Denial of the documents vide order dated 23.02.2024. So, it is argued that the applicant is not entitled to any discretion of this court on the account of his deliberate dilatory conduct and that both the captioned IAs may be dismissed with cost.

5. I have carefully considered the submissions and perused the records.

6. As per Affidavit of Service filed by the plaintiff, the defendant no.1/applicant was served with summons of the suit on 22.10.2023. Admittedly, the Written Statement was first time filed by defendant no.1/applicant on 03.12.2023. Apparently, the same has been filed beyond the statutory period of 30 days of service of defendant no.1. Chapter VII, Rule 4 of Delhi High Court (Original Side) Rules clearly mandates that in case the Written Statement is not filed within 30 days of service, the defendant has to establish that he was prevented from filing Written Statement within 30 days due to exceptional and unavoidable reasons. The defendant is legally bound to explain each and every days delay to the court. It necessarily envisages filing of application by the defendant stating therein the reasons which led to delay in filing the Written Statement and the said reasons are exceptional and beyond his control. Notably, no application has been filed by the defendant no.1/applicant in the present matter explaining the delay in filing the Written Statement



beyond the statutory period of 30 days. On this ground alone, the Written Statement filed by defendant no.1 is liable to be taken off the record. Moreover, e-log reflects that the objections to the Written Statement filed by defendant no.1/applicant were first raised on 04.12.2023 and following defects were notified:

“One time process fee of Rs.500/-, index pagination not done and proof of service not attached.”

7. Notably, thereafter, the Written Statement was re-filed by the defendant no.1 only after expiry of more than 2 months i.e. on 22.02.2024. The defendant no.1 herein has filed an application seeking condonation of delay of 106 days in re-filing the Written Statement, wherein it is stated that on account of renovation of lawyers Chambers Blocks situated at Dwarka Court Complex, wherein the chambers of learned counsel for the defendant no.1/applicant is situated, the documents of the present case were misplaced due to shifting of files. However, in this digital era where online filing is done, learned counsel for the defendant no.1 could have easily removed the objections noted above without physical copies of the documents being available with the learned counsel for the defendant no.1. Moreover, the defendant no.1 has furnished a very general ground for seeking condonation of delay in re-filing of inordinate delay of 106 days and not specified which documents were misplaced; when the same were misplaced and when were found by learned counsel for the defendant no.1.

8. Apart from that, vide order dated 05.12.2023, the defendant no.1 undertook to supply the copy of Written



Statement and documents to learned counsel for the plaintiff after the counsel for the plaintiff informed about the non-receipt of the same. Despite the said undertaking, it was supplied to Ld. Counsel for the plaintiff only on 22.02.2024. Moreover, vide order dated 23.02.2024, the defendant no.1 was clearly directed as a last and final opportunity to take requisite steps to bring Written Statement and documents on record but despite the same, the Written Statement and documents were brought on record by defendant no.1/applicant finally only on 16.04.2024. No satisfactory explanation has been given by learned counsel for the defendant no.1/applicant for the inordinate delay in bringing Written Statement and documents on record.

9. Further, the documents in the present matter have been filed by defendant no.1/applicant only on 28.02.2024 despite service being effected upon defendant no.1 on 22.10.2023 and only explanation furnished by defendant no.1 is that the typing of the documents took time. However, it was open for the defendant no.1 to seek exemption from filing typed/translated copy of the documents at the time of filing of the documents with permission to file the same later on. So, this ground in itself constitutes no reasonable explanation for not filing the documents relied upon by the defendant no.1 within statutory period. The negligence and laches on the part of the defendant no.1, is writ large on the records and to my mind, the defendant no.1 has miserably failed to provide any sufficient or cogent reason for the delay in filing and re-filing the Written Statement.



10. The casual and careless conduct of the defendant no.1/applicant is also apparent from the fact that even IA no.8570/2024 filed on 28.02.2024 was not followed up diligently and the defects raised therein have also not been removed by the defendant no. 1 with alacrity. No plausible reason is furnished by learned counsel for the defendant no.1/applicant for explaining even the delay in re-filing IA bearing No.8570/2024.

11. In view of above reasons, I find no merit in both the captioned IAs and the same are dismissed. Accordingly, the Written Statement and documents filed by defendant no.1 are ordered to be taken off the record.

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12. Vide order of even date, Written Statement and the documents filed by defendant no.1 are ordered to be taken off record.

13. Vide order dated 23.02.2024, the right of the defendant no.1 to file Affidavit of Admission/Denial of the documents was forfeited and resultantly, the documents filed by the plaintiff are deemed to be admitted by the defendant no.1 as per Chapter VII Rule 4 of Delhi High Court (Original Side) Rules.

14. Pleadings qua defendant no.2 to 7 are already complete.

15. Pleadings qua defendant no.8 to 10 are already complete.

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



17. Re-notify the matter for marking of exhibits on 14.10.2024.

**PRIYA MAHENDRA (DHJS)
JOINT REGISTRAR (JUDICIAL)**

JULY 23, 2024/ab

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