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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 730/2022 & I.As. 19655-57/2022, 3605-06/2023, 31601-602/2024, 36686/2024, 37436/2024

CHANDNI FAZLI

.....Plaintiff

Through: Mr. Ankit Jain, Mr. Mohit Gupta, Ms. Anisha Gupta, Mr. Vishal Saxena, Ms. Seemab Ali Fatima and Ms. Meenakshi Garg, Advocates

versus

RAZIA SULTANA

.....Defendant

Through: Mr. P. S. Bindra, Sr. Advocate with Mr. Rakshit Pandey, Advocate for D-1 & D-2
Mr. Mukesh Kumar Dral, Mr. Rachit Khandelwal and Mr. Rohan Aggarwal, Advocates for D-3
Dr. I. M. Quddusi, Sr. Advocate with Mr. Kanti Tiwari, Advocates for D-3

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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20.09.2024

O.A. 105/2024

1. This is a chamber appeal filed by defendant nos. 1, 2 and 3 impugning the order dated 03.05.2024 passed by the Ld. Joint Registrar dismissing their application I.A. No. 8769/2023 seeking condonation of delay in filing of the written statement along with affidavit of admission/denial of documents.

Arguments on behalf of the appellants /defendant nos. 1 to 3

2. This matter was heard on 12.08.2024 and there was a serious dispute with respect to service of affidavit of admission/denial of documents on the



plaintiff.

3. Learned senior counsel for the plaintiff after being shown the contents of the service through e-mail dated 13.04.2023 on the plaintiff's erstwhile counsel Mr. Sanjeev Agarwal and present counsel Mr. Mohit Gupta on 19.04.2023 concedes that no affidavit of admission/denial of plaintiff's documents was served on the counsel.

3.1. In view of this factual position, learned senior counsel for the appellants/defendant nos. 1 to 3 states that the appellants unconditionally withdraw the submission made in the appeal that affidavit of admission/denial of documents was served on the plaintiff and/or to her counsel on 13.04.2023 or on 19.04.2023.

3.2. He concedes, after examining the record, that the affidavit of admission/denial of documents dated 11.07.2023 has not been served on the plaintiff and/or her counsel.

3.3. He states, however, that the appellants/defendant nos. 1 to 3 do not dispute any of the documents filed with the plaint. He has handed over to this Court the copy of the affidavit of admission/denial of documents affirmed on 11.07.2023. He states that eight (8) documents have been filed by the plaintiff with the plaint and in the affidavit of admission/denial only the legal notice dated 10.06.2021 mentioned at serial no. (4) has been denied.

3.4. He states, on instructions, that the appellants/defendant nos. 1 to 3 herein unconditionally withdraw the said denial and admit the receipt of the legal notice dated 10.06.2021. He states that a modified affidavit of admission/denial of documents recording this admission will be filed within a period of one (1) week from today after service on the plaintiff. He states



that with the filing of the said amended affidavit of admission/denial of documents, all documents of the plaintiff stand admitted. He states that, therefore, the delay in filing the affidavit of admission/denial of documents admitting the documents of the plaintiff be condoned.

3.5. He states that similarly the appellants/defendants unequivocally admit the averments set out at paragraph '21' of the plaint to the effect that the legal notice dated 10.06.2021 was received by the appellants/defendants.

3.6. He states that the defendant nos. 1 to 3 was served on 03.01.2023. He states that the appellants/defendant nos. 1 to 3 filed the written statement in the registry on 20.03.2023, however, no advance service was affected on the plaintiff/counsel. He states that the copy of the written statement along with application for condonation of delay in filing the written statement beyond the statutory period of 30 days was served through e-mail on the erstwhile counsel for the plaintiff, Mr. Sanjeev Aggarwal on 13.04.2023. He states that the written statement and the said application was re-served on the present counsel for the plaintiff, Mr. Mohit Gupta as well on 19.04.2023.

3.7. He states that the written statement was initially filed with the registry on 20.03.2023; however, the defects marked by the registry could not be removed within the period of 30 days and finally after removing all the defects, the written statement has been placed on record on 12.09.2023.

3.8. He states that the contents of the written statement which has come on record on 12.09.2023 is identical with the contents of the written statement served on the plaintiff/counsel on 13.04.2023/19.04.2023.

3.9. He states that since the initial filing of the written statement with the registry was made on 20.03.2023 and its service on the plaintiff/counsel was made on 13.04.2023 and again on 19.04.2023, which is all within the period



of 120 days, therefore, the delay in filing the written statement beyond the period of 30 days be condoned. He states that the appellants/defendants are willing to pay costs to compensate the plaintiffs for the delay.

Arguments on behalf of the plaintiff

4. In reply, learned counsel for the plaintiff states that the receipt of the written statement and application for condonation of delay on the plaintiff/counsel on 13.04.2023/19.04.2023 is a matter of record.

4.1. He states that, however, the affidavit of admission/denial of documents ought to have been filed with the written statement and having not filed the said affidavit of admission/denial of documents, therefore, the documents are deemed to be admitted as per Rules 3 and 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 and the written statement of the appellant/defendants cannot be permitted to be taken on record under the same Rule.

4.2. He states that the written statement was filed in the registry and served on the plaintiff within 120 days. He states that, however, the I.A. No. 8769/2023 is bereft of any grounds, which would show sufficient cause for justifying the delay in filing the written statement beyond the statutory period of 30 days until 13.04.2023. He states that appellants/defendants have also not filed any application seeking condonation of delay in re-filing the written statement for the period between 20.03.2023 and 12.09.2023.

4.3. He states that, therefore, the plaintiffs oppose the present appeal.

Findings

5. This Court has considered the submissions of the parties and perused the record.

6. The relevant facts for deciding the appeal are, the



appellants/defendants were served on 03.01.2023. The statutory period of thirty (30) days for filing the written statement expired on 02.02.2023. The grace period of ninety (90) days expired on 03.05.2023.

7. The said defendants filed the written statement in the registry on 20.03.2023 and after removing the defects marked by the registry finally had the written statement placed on record on 12.09.2023. The written statement was served on the plaintiff/counsel on 13.04.2023 and again on 19.04.2023.

8. The filing in the registry and service on the plaintiff/counsel is within the grace period of ninety (90) days. It is not disputed that the contents of the copy of the written statement served on the plaintiff on 13.04.2023/19.04.2023 and the version of the written statement finally brought on record on 12.09.2023 remains unaltered. Thus, the written statement remained pending in the registry for removing of procedural defects marked by the registry.

9. The non-filing of the affidavit of admission/denial of documents within 120 days is a matter of record. In the affidavit of admission/denial of documents dated 11.07.2023, the defendant has admitted all the documents except the legal notice dated 10.06.2021, which denial has also been withdrawn and the defendant has unconditionally admitted the receipt of the legal notice. In view of the same, the right which has accrued in favour of the plaintiff under Rule 4 of the Original Side Rules, 2018 as regards admission of the documents now stands confirmed by the positive admission of the appellants/defendants.

10. In the considered opinion of this Court in view of the fact that the written statement stood filed on 20.03.2023 and served on the plaintiff/counsel on 13.04.2023/19.04.2023 [within the grace period of 90



days] and the appellants/defendants have admitted all the documents filed by the plaintiff, therefore, the right of the defendants to have their written statement dated 17.03.2023 placed on record ought not to be foreclosed and the delay in filing and re-filing ought to be condoned, subject to payment of costs.

11. This Court is also of the view that there is no doubt that appellants/defendants' actions has protracted the trial due to the laxity shown in the re-filing process, however, it would be in the interest of justice that the defence of the appellants/defendants herein is brought on record for an effective adjudication of the rival claims and the matter is decided on merits. Therefore, this Court hereby condones the delay of filing the written statement during the grace period of ninety (90) days subject to cost of Rs. 50,000/- payable to the plaintiff within one (1) week from today.

12. The issue of condonation of delay in re-filing is a matter between the party and the Court. In this case, since the contents of the written statement served on the defendant and the version of the written statement remain unaltered despite the delay in re-filing between 20.03.2023 and 12.09.2023, this Court is inclined to condone the said delay.

13. Though it is a matter of record that the appellant has made incorrect statements in this appeal as regards service of affidavit of admission/denial of documents on the plaintiff, however, in view of the withdrawal of these incorrect statements and the subsequent admission of all documents filed by the plaintiff and in interest of justice, the delay in filing the affidavit of admission/denial is hereby condoned. It is directed that the appellants/defendants shall remain bound down by the statements recorded today *qua* the unequivocal admission of the receipt of the legal notice dated



10.06.2021.

14. It is clarified that this order condoning delay in filing the written statement and the affidavit of admission/denial of documents has been passed in view of the aforesaid unequivocal admission made by the defendants/appellants qua the receipt of the legal notice dated 10.06.2021.

15. The modified affidavit of admission/denial of documents of the appellants/defendants shall be filed within a period of one (1) week from today along with tender of cost of Rs. 50,000/- to the plaintiffs, failing which the present order shall stand automatically recalled and the order of the Ld. Joint Registrar shall stand restored.

16. With the aforesaid directions, the appeal stands allowed.

17. The defendant nos. 1 to 3 and their counsel on record are cautioned against making any untrue statements on record and the condonation of the incorrect statements in the appeal is a one-time measure. The counsel for the defendants shall ensure that due advance service is effected on the plaintiff before filing any pleading/document in the registry failing which the defence of the defendants/appellants shall stand struck off.

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18. Subject to receipt of the costs of Rs. 50,000/- and revised affidavit of admission/denial of documents filed by the defendants within one (1) week, the plaintiff is directed to file its replication within a period of 30 days thereafter.

19. List before Ld. Joint Registrar for further proceedings on 19.11.2024.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 20, 2024/rhc/ms