



\$~9

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

+ **CS(OS) 197/2016**

RAJBIR SINGH

..... Plaintiff

Through: **Mr. Madhur Mukul Tripathi,**
Advocate

versus

TRILOK CHAND & ORS.

..... Defendants

Through: **Mr. G.S. Singh, Advocate for D-1**
to 8

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **13.11.2017**

O.A. 64/2017

1. By this appeal, the only grievance of the defendants is that while deciding IA 13768/2016, the learned Joint Registrar in Page 2 of the order dated 1st March, 2017 noted that no justifiable explanation has been given by the learned counsel for the defendant for inordinate delay in moving the application, which create doubts in the mind that defendants are indulging in delaying tactics, thus dismissing the application with a cost of ₹5,000/-.

2. Learned counsel for the defendant states that after receipt of summons on 8th August, 2016, followed by 13th August, 2016, only in the month of October, the defendants approached the learned counsel, who immediately thereafter filed an application being I.A. 13768/2016 under Section 151 CPC seeking complete documents as referred in the suit to file effective written statement.



3. Undoubtedly, the application is sketchy and does not say when the defendants were served or as to when the counsel was contacted by the defendants.

4. It may also be noted that in the order dated 19th January, 2017, when the I.A. 13768/2016 came up before the learned Joint Registrar for the first time, it was noticed that no vakalatnama has been filed on behalf of defendants/ applicants, which fact is contrary to the record because vakalatnama was filed by the learned counsel for the defendants on 3rd November, 2016.

4. 5. Considering the fact that the learned counsel was engaged after two months and there was, thus, delay in filing the application, the observations of the learned Joint Registrar in the last paragraph of the 2nd Page of the order dated 1st March, 2017 cannot be said to be unwarranted.

6. The appeal is accordingly dismissed.

I.A. 13254/2017 (under Section 5 of the Limitation Act seeking condonation of delay)

1. Notice.

2. Learned counsel for the defendants/ non-applicants accepts notice.

3. By this application, the plaintiff/applicant seeks condonation of delay of 49 days in filing the appeal.

4. For the reasons stated in the application, the delay of 49 days in filing the appeal is condoned. IA stands disposed of accordingly.

O.A. 150/2017

1. Notice.

2. Learned counsel for the non-applicants accepts notice.

3. By this chamber appeal, the appellant/ plaintiff challenges the order



dated 16th August, 2017 passed by the learned Joint Registrar allowing the application of the defendants being IA No. 2542/2017 (under Section VIII Rule 1 CPC) for taking the written statement on record.

4. The grievance of the plaintiff/ appellant, in the present appeal, is that since no fresh set of documents were supplied on 19th January, 2017, the delay in filing the written statement could not have been condoned. Learned counsel for the plaintiff bases his case on the fact that on 19th January, 2017, none appeared on behalf of defendants and thus, there was no cause for the learned counsel for plaintiff to have supplied the copies to the learned counsel for the defendant. He further states that on the record, there was no address of the learned counsel for defendant, hence documents were not supplied and based on the earlier documents supplied, the written statement was filed, thus it was belated and delay in filing the written statement could not be condoned.

5. On 19th January, 2017, the learned Joint Registrar passed the following order :-...

“CS(OS) 197/2016
RAJBIR SINGHPlaintiff
Through: Ms. Madhu Mukul Tripathi, Adv.
versus
TRILOK CHAND & ORS.Defendant
Through: None for applicant.
Mr. Ravish Roshan, Adv. for D-4.

CORAM:
SH. AMIT KUMAR (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER
% 19.01.2017
Case received from the Court of Sh. Ashutosh Kumar (DHJS), Joint Registrar (judicial) as he is on leave today.

IA. No.13768/2016



This is application under Section 151 CPC purported to file on behalf of the defendants for directions to the plaintiff to supply complete and legible documents.

None is present for the applicants nor there is any Vakalatnama on behalf of the applicants on record to ascertain as to which of the defendants has filed this application.

The counsel appearing for defendant No.4 submits that defendant No.4 seeks some copy of the documents which have not been filed by the plaintiff before filing the written statement. No such oral request can be considered.

*Let the I.A. be listed before the concerned Joint Registrar on **01st March, 2017.***

6. As noted above, the finding of the learned Joint Registrar that no vakalatnama has been filed on behalf of applicant is incorrect for the reason that a joint vakatlatnama by all the defendants in favour of Sh. G.S. Singh Advocate and Mr. Kumar Nikhil Advocate had been filed on 3rd November, 2016. On 19th January, 2017 as noted above, Mr. Ravish Roshan Advocate appeared, whose presence was noted for defendant No. 4 but the fact remains that a single vakalatnama has been filed which was jointly executed by all the defendants and there was no separate vakalatnama for defendant No. 4. Thus the contention of learned counsel for the appellant/plaintiff that no address of the defendant's counsel was available on record is also incorrect as the address of the learned counsels for the defendants is mentioned in the vakalatnama.

7. The plaintiff/ applicant in his application has stated that learned counsel for the plaintiff was willing to handover a second set of documents on 19th January, 2017 and the fact that the proxy counsel was present on behalf of defendants, the stand of the defendants that a proper set of documents was supplied to the defendants only on 19th January, 2017 and then the written statement was filed on 26th February, 2017 is fortified. Thus



the order dated 16th August, 2017 passed by the learned Joint Registrar allowing IA No. 2542/2017 under Order VIII Rule I CPC filed the defendant cannot be said to be illegal warranting interference.

8. Appeal is accordingly dismissed.

I.A. 2796/2017 (under Order VIII Rule 10 CPC)

1. By this application, the plaintiff seeks a judgment against the defendants as the defendants have not filed the written statement in the prescribed time.

2. The written statement of the defendants having been taken on record, by condoning the delay in filing the written statement, present application is dismissed as infructuous.

CS(OS) 197/2016 and I.A. 5285/2016 (under Order XXXIX Rules 1 and 2 CPC)

1. Learned counsel for the plaintiff states that the replication and rejoinder affidavit will be filed within four weeks.

2. List before the Joint Registrar on 30th January, 2018 for completion of pleadings and admission/ denial on documents.

3. The date of 21st November, 2017 before the learned Joint Registrar stands cancelled.

MUKTA GUPTA, J

NOVEMBER 13, 2017

P