



2025:DHC:3244



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

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Reserved on: 20th January, 2025**Pronounced on: 5th May, 2025**

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CM(M) 3958/2024 & CM APPL. 70261/2024 (Stay)**MRS DAISY RAJPAL**

.....Petitioner

Through: Mr. Rahul Dev Tyagi, Adv
alongwith Mr. Satyaprakash
Rajpal husband of petitioner.

versus

SH PUKHRAJ SINGH

.....Respondent

Through: Mr. G. S. Narula & Mr.
Vijender Singh, Advs alongwith
respondent.

CORAM:-**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is a petition under Article 227 of the Constitution of India, challenging the legality and validity of the impugned orders dated 08.11.2023, 05.12.2023 & 11.09.2024, passed by the court of learned District Judge-03, Patiala House Court, New Delhi in CS No. 219/2023, titled "*Pukhraj Singh Vs. Daisy Rajpal.*"

2. The brief background of the case is that respondent filed a suit for recovery of possession, recovery of arrears, mesne profits/damages and other charges against the petitioner. Summons were issued to the petitioner



on 29.05.2203 for 05.08.2023. Since the summons were unserved, fresh summons were issued for 23.09.2023 with direction to serve the petitioner through all the prescribed modes as per the Code of Civil Procedure [“Code”]. Directions were issued that process be also served through WhatsApp and one copy of the process be affixed at the suit premises.

3. Summons were served by the Process Server by way of affixation on 15.09.2023. On 23.09.2023, the Presiding Officer of the court was on leave and therefore the matter got adjourned to 08.11.2023.

4. Petitioner did not file written statement within the stipulated period, and therefore vide order dated 08.11.2023, the defence of the petitioner was struck off. The impugned order dated 08.11.2023 reads as under:-

“08.11.2023

Present: Sh. G.S. Narula, Ld counsel for the plaintiff along with the plaintiff.

Sh. Satya Prakash Rajpal, husband of the defendant.

No WS has been filed by the defendant despite service and lapse of statutory period. On account of non-filing of WS, defence of defendant is hereby struck off.

At this stage, husband of the defendant states that he has instructions from the defendant to settle the matter. On joint request of the parties and upon signing of referral form, parties are referred to Mediation Centre, Patiala House courts, New Delhi. Parties are directed to appear before Ld. Mediator now on 10.11.2023 at 2:00 pm.

Put up before this court for report of settlement failing which further proceedings on merits now on 05.12.2023”

In the meanwhile, defendant is directed to bring on record her fresh address within one week from today and supply the same to the opposite side as well.”

5. No settlement took place in the mediation proceedings and therefore on 05.12.2023, the case was adjourned to 11.01.2024 for plaintiff’s evidence. The order dated 05.12.2023 reads as under:-



“05.12.2023

Present: Ld. counsel sh. G.S. Narula for the plaintiff along with plaintiff.

Defendant in person along with her husband.

Considered the last orders. Mediation proceedings have failed between the parties.

Defendant has filed her fresh address in terms of last orders. Plaintiff may file the amended memo of parties after incorporating the fresh address of the defendant.

Defence of defendant is already struck off.

Considering the nature of suit as well as the fact that defendant has not paid the rent since January 2023 and the lease has already expired on 30.09.2023 and as is requested, shorter date is given.

Relist the matter for entire PE now on 03.01.2024.

At request date stands changed to 11.01.2024.”

6. After recording the evidence of the plaintiff, while the case was listed for final arguments, it appears that petitioner filed three separate applications under Section 151 CPC. All the three applications were dismissed vide impugned order dated 11.09.2024, which reads as under:-

“11 .09.2024

Present: Mr. G.S. Narula, Ld. Counsel for the plaintiff alongwith plaintiff in person.

Mr. Rahul Dev Tyagi. Ld. Counsel for the defendant alongwith defendant in person.

Mr. Pardeep Kumar, Ld. Counsel for the defendant.

Mr. Rahul Dev Tyagi, Advocate submits that he is the new Counsel of the defendant.

The defendant confirms that Mr. Rahul Dev Tyagi is her new Counsel.

In view of the above submissions, Mr. Pardeep Kumar, the previous counsel for the defendant is discharged from the present case.

Reply to the application under Section 151 CPC dated 27.06.2024 is filed by Ld. counsel for the plaintiff. He submits that copy of the reply was supplied to the previous counsel of the defendant.



Mr. Pardeep Kumar, the earlier counsel of the defendant confirms that copy was supplied to him.

An application under section 151 CPC for recalling orders dated 18.11 .2023 and 05.12.2023 is filed alongwith documents by Ld. Counsel for the defendant. Copy is supplied.

An application under Section 151 CPC for waiver of cost is also filed by Ld. counsel for the defendant. Copy is supplied.

The application for waiver of cost is taken up for consideration.

On 29.05.2024, testimony of the plaintiff was recorded. His evidence was closed.

Since the defence of the defendant was already struck off, the matter was adjourned for final arguments to 05.08 .2024.

On 05.07.2024, an application under Section 151 CPC was filed by the defendant for permission to lead evidence.

On 05.07.2024 itself, the court directed the defendant to tile process fee so that notice of the application could be issued to the plaintiff. However, process fee was not filed and therefore, notice was not issued.

Since notice was not issued, on 05.08.2024, the plaintiff was not having copy of the application and therefore, the case had to be adjourned.

Due to the failure of the defendant to take steps for issuance of the notice, a cost of Rs.20,000/- was imposed upon the defendant for it to be paid to the plaintiff for causing adjournment on 05.08.2024.

However, at the request of the Ld. Counsel for the defendant, a lenient view was taken and the cost was reduced to Rs. 15,000/-.

The defendant is now seeking waiver of the cost on the ground that it was due to unavoidable circumstances and "misunderstanding about the spirit of the order dated 05.07.2024 on the account inadvertently", that process fee was not filed.

It is pleaded that the cost of Rs.15,000/- is on the higher side and beyond the capacity of the defendant to pay it.

It is stated that the defendant has failed to understand the requirement of filing process fee since the plaintiff has always been appearing before the court. It is submitted that since the plaintiff appears before the court, the court could have just directed the defendant to supply copy of the application to the plaintiff in the Court.

It is prayed that the cost imposed on 05.09.2024 be waived. Arguments have been heard and record has been perused.



On 05.07.2024, the plaintiff was not present before the Court when the application of the defendant under Section 151 CPC came up for consideration before the court. Therefore, the court could not have directed the defendant to supply copy of the application to the plaintiff on 05.07.2024.

So that effective proceedings can take place on 05.08.2024, the Court directed the defendant to file process fee so that notice of the application can be issued to the plaintiff of the application and the plaintiff comes prepared with the application.

It is due to the failure of the defendant to file process fee that the plaintiff did not have copy of the application on or before 05.08.2024 and therefore, the case had to be adjourned on 05.08.2024.

The Court is of the opinion that whenever a case is adjourned due to a party, that party must compensate the opposite party in monetary terms for the adjournment, irrespective of the grounds for which adjournment is taken.

Cost of Rs.15,000/- is not punitive and has been imposed only to compensate the plaintiff for the adjournment on 05.08.2024.

The Court has already taken a lenient view and had reduced the cost. The defendant claims to have purchased a property in Vasant Vihar area in the year 2024 and states that paying the cost of Rs.15,000/- is beyond her capacity.

Be that as it may, if payment of cost does not suit her pocket, she should ensure that the case does not get adjourned due to her mistakes.

Application under section 151 CPC for waiver of cost is dismissed.

Cost of Rs.15,000/- is paid by the defendant to the plaintiff.

The applications of the defendant under Section 151 CPC dated 27.06.2024 and 11.09.2024 are now taken up for consideration.

In the application dated 27.06.2024, it is prayed that the defendant be permitted to lead evidence.

In the application dated 11.09.2024, it is prayed that orders dated 18.11.2023 and 05.12.2023 be recalled.

It is further prayed that the police complaint and FSL report secured from a private lab be taken on record.

Arguments on the applications are heard and the record has been perused.

By order dated 08.11.2023, the defence of the defendant was struck off since written statement was not filed.



On 05.12.2023, the Court noted that the defence has already been struck off and therefore, adjourned the case for recoding of plaintiff's evidence.

It is significant to note that there is no written statement on record. There is no prayer for permitting the defendant to file written statement.

Since there is no written statement and therefore no defence, the defendant cannot be permitted to lead evidence.

Since there is no written statement on record, there was no requirement for framing of issues. Both the applications of the defendant under section 151 CPC are misconceived and are accordingly dismissed.

To come up for final arguments on 02.12.2024.

At this stage, the defendant submits that she will be traveling to the US from 27.09.2024 and will return in January 2025.

She requests that the next date of hearing be changed.

Ld. counsel for the plaintiff requests that a short date of hearing be given.

In view of the above submissions, the next date of hearing is changed to 24.09.2024.

At this stage, Ld. counsel for the defendant requests that the next date of hearing be not changed.

Request is allowed

To come up for final arguments on 02.12.2024.”

7. Learned counsel for the petitioner submits that trial court has erroneously struck down the defence of the petitioner without providing sufficient opportunity for filing of written statement. It is submitted that petitioner was served with summons by affixation on 15.09.2023, he entered appearance on 23.09.2023. According to the learned counsel of petitioner, the limitation period for filing the written statement is to be counted from 23.09.2023, and thus computing, the period of limitation had not expired on 08.11.2023. It is further submitted that the learned trial court did not grant any



opportunity to cross examine the plaintiff and also did not grant any opportunity to lead defendant's evidence to the petitioner.

8. It has been further submitted that respondent is not the owner of the third floor of the property as claimed by him in his suit filed before the trial court. It is M/s.K.N.A. Builders, who is the actual owner of the third floor of the property. Respondent thus wants to grab the third floor of the property without any right, title or interest and deprive the petitioner from his legal rights to occupy the third floor of the property. It is submitted that petitioner filed a false and frivolous suit, based on forged and fabricated documents, and therefore, petitioner may be allowed to lead evidence in defence of the suit and may also be allowed to file the written statement to the main suit so as to enable the learned trial court to adjudicate upon all the issues involved in the suit in order to secure the interest of justice.

9. Learned counsel for the respondent has supported the orders passed by the learned trial court arguing that petitioner did not file the written statement within stipulated period and therefore the defence was rightly struck off by the learned trial court. It is submitted that in his applications filed before the learned trial court, no request was made for filing the written statement. It is further argued that petitioner has concealed the fact that he had cross examined the plaintiff. It is further submitted that since the defence of the petitioner had been struck off, he had no right to produce his defence and



therefore defence evidence was also rightly closed and thus there is no merit in the petition and the same is liable to be dismissed.

10. Order 8 Rule 1 CPC provides that defendant shall within 30 days from the date of service of summons on him, present a written statement of his defence, provided that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other day, as may be specified by the court, for the reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than 90 days from the date of service of summons.

11. The summons issued by the learned trial court for 23.09.2023 clearly contained a stipulation to the defendant to file written statement within 30 days of the service of summons. As per the report of Process Server, summons were served through affixation on 15.09.2023. That being so, petitioner was supposed to file the written statement within the period of 30 days. Such written statement should have been filed on or before 14.10.2023. The law provides outer window of 90 days for filing the written statement, but the same is subject to the reasons to be recorded in writing and on payment of such costs as the court deems fit. No doubt, the period stipulated in Order 7 Rule 1 is directory and can be extended even beyond 90 days, but then the defendant must explain the reasons for such extension.

12. A perusal of the order dated 08.11.2023 reveals that petitioner did not file the written statement even till 08.11.2023. No request was



made before the court for grant of more time to file written statement. The order dated 08.11.2023, vide which the defence was struck off, was never challenged. The learned trial court reiterated in the next order i.e. order dated 05.12.2023 that the defence of the defendant is already struck off. Even then, no request was made for grant of more time to file the written statement. No application in writing was filed before the trial court for review of the previous order by which the defence of the petitioner was struck off.

13. Respondent has placed on record the copies of various orders including the order dated 28.05.2024, 29.05.2024 & 05.08.2024. The order dated 28.05.2024 reveals that petitioner replaced his lawyer with a newly engaged lawyer, who filed an application under Section 151 CPC, seeking permission to cross examine the plaintiff. Such application was allowed subject to cost. Upon payment of cost, plaintiff was cross examined on the next date i.e. 29.05.2024, where after, the plaintiff's evidence was closed. Petitioner sought permission from the court to lead defendant's evidence, but the said request was turned down on the ground that petitioner had not filed the written statement and his defence was already struck off.

14. Order dated 05.08.2024 reveals that on 05.07.2024, petitioner had filed an application under Section 151 CPC with prayer to lead defence evidence. Upon filing such application, the court had directed the petitioner to file process fee so that the notice of the application can be issued to the petitioner for the date fixed i.e. 05.08.2024, but



process fee was not filed, and therefore, notice had not been issued. On account of this reason, petitioner was subjected with adjournment cost of Rs. 20,000/-, which was reduced to Rs. 15,000/- at the request of the leaned counsel for the petitioner and the case was adjourned to 11.09.2024 for arguments on the application.

15. As is evident from the order dated 11.09.2024, extracted above, the application filed by the petitioner for waiver of cost was dismissed. During arguments before this Court, no serious challenge was raised to the dismissal of the application for the waiver of cost. The main challenge is to the dismissal of the applications dated 27.06.2024 and 11.09.2024, filed under Section 151 CPC. By virtue of application dated 11.09.2024, petitioner, for the first time, sought recall of order dated 18.11.2023 and 05.12.2023, by which, his defence was struck off. He also prayed for grant of permission to place on record copy of police complaint as well as the FSL report secured from a private lab qua the relied upon documents i.e. lease agreement Ex. PW-1/1 to prove the forgery committed by the petitioner. His grievance in the application is that the plaintiff's evidence was recorded without framing the issues.

16. Learned counsel for the petitioner has argued that the previous counsel of petitioner had not properly guided him and therefore the petitioner was unable to take appropriate legal remedies for setting aside the order dated 08.11.2023 and 05.11.2023. It is also argued that the lease deed dated 23.11.2022 (Ex. PW-1/1) relied upon by the



respondent, does not bear the signatures of the petitioner, his signatures on the rent deed are forged, and therefore, to prove the same, he wants to place on record the report of a private expert.

17. The Supreme Court as also this Court in number of cases has observed that there has been a growing tendency amongst the litigants to blame their previous Advocates for their own negligence/default. Petitioner has only made a bald averment in the application that his previous counsel did not render proper legal guidance, due to which, appropriate legal remedies for setting aside the order dated 08.11.2023 and 05.12.2023 were not undertaken. As seen from the record, petitioner engaged a private counsel on 28.05.2024. Still the application was filed as late as on 11.09.2024 i.e. almost four months after replacing the previous counsel. The subsequent counsel engaged by the petitioner, filed an application under Section 151 CPC seeking permission to cross examine the plaintiff, but no application was filed even at that stage for recall of order of striking off the defence. It appears that petitioner was satisfied in just cross examination of the plaintiff and was not interested till 11.09.2024 to file the written statement. The first such request for filing the written statement came by way of application dated 11.09.2024. No satisfactory explanation has been given by the petitioner as to why such application was not filed at the earliest. The provisions of Order 8 Rule 1 CPC being directory, no doubt, the length of delay may not be significant, provided the defendant offers justified reasons for not filing the



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written statement within the stipulated period. Petitioner has not offered any justified reason for not filing the written statement within the stipulated period of 30 days or even the extended period of 90 days. That being so, there is no just ground for recall of orders dated 18.11.2023 and 05.12.2023.

18. Since petitioner did not file the written statement and his defence had already been struck off, obviously, there was no need to frame any issue before directing the plaintiff to lead its evidence. Whether or not the signatures of petitioner on the rent documents are forged, is a matter of defence of the petitioner. After the defence is struck off, defendant gets limited right to cross examine, but cannot adduce independent evidence.

19. Hence, I do not find any perversity or illegality in the impugned order passed by the learned trial court. Petition filed is without any merits.

20. Petition is therefore dismissed.

RAVINDER DUDEJA, J.

MAY 05, 2025

RM