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

Reserved on: 12th May, 2026
Date of Decision: 18th May, 2026

+ CM(M) 2010/2024, CM APPL. 12972/2024, CM APPL. 12133/2025
& CM APPL. 12134/2025

SH. NATHOO RAM JOLLY & ANR.Petitioners

Through: Mr. G.S. Narula, Advocate.

versus

RAKHEE MARWAHRespondent

Through: Mr. Mayur Singhal, Advocate along
with respondent in person.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

1. This hearing has been conducted through hybrid mode.
2. The present petition has been filed by the petitioners/plaintiff under Article 227 of the Constitution of India, assailing the order dated 21st November, 2023 passed by the learned Trial Court in *CS No. 327/2022*, whereby the application filed by the respondent/defendant under Order VIII Rule 1 of the Code of Civil Procedure, 1908 ('CPC') seeking condonation of delay in filing the written statement has been allowed.
3. I have heard the learned counsel for the parties and perused the record.
4. Learned counsel for the petitioners has argued that the learned Trial Court has passed the impugned order on the basis of surmises and conjectures, which is against the facts and law. The application under Order



VIII Rule 1 CPC has been moved on behalf of the respondent with a *mala fide* intention to delay the proceedings of the case. The respondent has filed the written statement after 229 days without any plausible explanation for the inordinate delay. The reasons mentioned in the application seeking condonation of delay are frivolous and baseless. The documents on the basis of which condonation of delay in filing the written statement was sought were already in possession of the respondent even prior to the receipt of summons. On these grounds, it is prayed that the impugned order be set aside.

5. *Per contra*, learned counsel for the respondent has argued that the learned Trial Court has passed the impugned order after considering the facts and circumstances of the case and there is no illegality or infirmity in the impugned order. The delay in filing the written statement was neither intentional nor deliberate, but occurred due to lack of material documents which were necessary for the preparation of the written statement and also due to the change of her counsel. The petition is liable to be dismissed as it is devoid of merits.

6. The relevant portion of the impugned order dated 21st November 2023, reads as under:

“8. After considering the arguments on the application filed on behalf of defendant, advanced by Id. Counsels for both the parties, I am of the view that the consideration which cannot be ignored that if sufficient cause for excusing delay is shown, the discretion given to the court to condone delay. The discretion has been deliberately conferred upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. Further, it is trite law that a party should not suffer due to the inaction on the part of advocate and that matter should be decided on merits rather on technical ground.



9. *At this juncture a beneficial reference can be made to a decision of the Hon'ble Apex Court in **Ram Nath Sao Alias Ram Nath Sahu & Ors. Vs Gobardhan Sao and Ors. MANU/SC/0135.2002: (2002) 3 SCC 195**, wherein, Court has observed as under:*

“But one thing is dear that the court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bonafides can be imputed to the defaulting party. On the other hand, while considering the matter the court should not lose sight of the fact that they by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and /or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lies terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

10. *In the aforesaid backdrop, this court is of the considered view that valuable right of the defendant should not be defeated by declining to condone the delay which has occurred for the inaction on the part of his advocate.*



Accordingly the court is inclined to exercise the discretion in favour of the defendant. However, with some exemplary cost.

11. *For the above discussion and observation the present application is allowed accordingly. WS filed on behalf of the defendant is taken on record subject to cost of Rs. 10,000/- to be paid to the plaintiff.*

Accordingly, application Under Order VIII Rule 1 CPC for seeking condonation of delay in filing of WS is allowed.”

7. Order VIII Rule 1 of CPC reads as under:

“1. Written Statement.—The Defendant shall, within thirty 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 thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

In ***Kailash V Nankhu***, (2005) 4 SCC 480, the Hon’ble Supreme Court observed as under:

“42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for



reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.”

8. A perusal of the record shows that the petitioners have filed a suit for possession and permanent injunction in respect of the suit property against the respondent. Petitioner no.1 is the father and petitioner no.2 is the brother of the respondent. In the Trial Court, the suit is stated to be at the stage of evidence on behalf of the respondent.

9. Keeping in view the nature and stage of the suit and the grounds taken in the application seeking condonation of delay in filing the written statement, this Court is of the opinion that extension of time to file the written statement was required in the interest of justice and grave injustice would be occasioned if time was not extended. Accordingly, this court does not find any illegality or infirmity in the impugned order, as the same is a reasoned order passed in accordance with law. The petition is dismissed as being devoid of any merits. Pending application(s), if any, also stand disposed of.

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 18, 2026/ABK