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

+ **CS(OS) 511/2023**

**ANITA NANDA**

..... Plaintiff

Through: Mr. Mandeep Singh  
Vinaik, Mr. S.K. Sagar,  
Ms. Ragini Vinaik, Ms.  
Kanishka Sharma, Ms.  
Thanglunkim and  
Adv.Gaikhaunlung, Advs.

versus

**JAYANT NANDA**

..... Defendant

Through: Mr. Lalit Gupta, Mr. Ankit  
Singh, Mr. Anmol Ghai  
and Mr. Priyanshu Jain,  
Advs.

**CORAM:**

**JOINT REGISTRAR (JUDICIAL) MS. SHUCHI  
LALER (DHJS)**

**ORDER**

**22.04.2024**

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**IA No. 16074/2023 u/O XXXIX R.1 & 2 CPC by  
plaintiff**

1. Reply to the application has not been filed. Learned counsel for defendant submits that he has filed the reply vide diary no. 1178818/2024 dated 20.04.2024. Same is not on record, He is requested to check it up with the registry and get the same placed on record. Copy be supplied within a week. Rejoinder be filed within two weeks thereafter.

**IA No. 20793/2024 u/O XXXIX R.1& 2 CPC by  
plaintiff**

2. Learned counsel for defendant submits that the notice of the captioned IA has not been issued.

**IA No. 24648/2023 u/s 151 CPC seeking suspension of**



**limitation for filing of written statement during mediation proceedings**

3. Learned counsel for plaintiff had submitted on 05.04.2023 that the mediation proceedings stand terminated and he had given notice of the same to learned counsel for defendant on 28.03.2024. He had further submitted that he does not wish to file reply to the captioned IA as it has become infructuous.

4. Learned counsel for defendant had submitted on 05.04.2023 that the captioned IA be listed before the Hon'ble Court for appropriate directions. The matter is already listed before the Hon'ble Court on 24.04.2024.

**IA No. 180/2024 under Chapter VII R.4 of Delhi High Court (Original Side) Rules by defendant**

5. By way of captioned IA, the defendant is seeking condonation of delay of 88 days in filing the written statement.

6. Learned counsel for plaintiff had submitted on 05.02.2024 that he does not wish to file reply and has addressed arguments straightaway.

7. Arguments heard. Record perused.

8. The present suit for partition was filed on 22.08.2023. On 24.08.2023, when the suit was listed for the first time, learned counsel for defendant entered appearance on advance notice and accepted the summons. There is no denial and it is also borne out from the record that written statement was filed on 20.12.2023.

9. Having entered appearance on 24.08.2023, the defendant should have filed the written statement within a maximum period of 120 days i.e. up to 23.12.2023



whereas it was filed on 20/12.2023. Hence, undisputedly the written statement has been filed after completion of 30 days but before expiry of 120 days.

10. Chapter VII Rule 4 of Delhi High Court (Original Side) Rules provides for the extension of time that can be granted by the courts if the written statement is not filed within thirty days. The provision reads as under:-

***4. Extension of time for filing written statement-If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/deposited. In case the defendant fails to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.***

11. Thus, a maximum extension of 90 days can be granted, which, however, is not a matter of right, exceptional and unavoidable reasons for delay have to be explained. In the present case, the defendant has explained the reasons for delay in filing the written statement, stating as under:-

*“4-. That the Defendant is a NRI and was not available in India between 06.09.2023 till 10.11.2023 as during this time period, the Defendant was permanently residing and Working in Dubai. Thereafter, Defendant was again not available in India between 20.11.2023 till 02.12.2023 as during this time period, the Defendant was in Thailand in relation to some dispute pertaining to a land parcel situated at Koh Samui Island held by a holding*



*company of the Defendant at Thailand. As such, during these time periods, Defendant was not readily available to assist his Counsel for the drafting of Written Statement.*

*5. That the Defendant is a senior citizen, aged about 67 years and suffers from various cardiovascular ailments and complications due to which he could not be readily available to assist and instruct his lawyer in drafting and preparation of the Written Statement.....*

*6. That the Defendant has not been keeping good health since long because of which the Defendant was unable to discuss the matter with his lawyer for the preparation of Written Statement.*

*7. Additionally, the Defendant was also trying his best to amicably settle the disputes between the parties.*

*12. That still further, there were various records which the Defendant had to refer to and compile in order to make appropriate submissions in the Written Statement so as to confirm that there is no factual error in the same. The records which the answering Defendant had to look for and refer to were bulky which also consumed a lot of time”.*

12. A reading of the aforesaid paras reveals that the defendant is seeking condonation of delay on four grounds: First, he was not available in India from 06.09.2023 till 10.11.2023 and thereafter, from 20.11.2023 to 02.12.2023; Second he is a senior citizen suffering from Cardio-Vascular ailments; Third defendant was trying to settle the dispute and matter was pending in Delhi High Court Mediation and Conciliation Center and Lastly the records which the defendant has referred to were bulky and had



consumed a lot of time.

13. So far as the pendency of the matter in Delhi High Court Mediation and Conciliation Center is concerned, exploring the possibilities of settlement cannot, ipso facto, extend the time lines provided under the Delhi High Court (Original Side) Rules for filing of written statement.

14. With respect to the medical condition of defendant, a plethora of documents have been filed on record. Learned counsel for plaintiff vehemently urges that the defendant was not staying at any sanatorium, rather he was attending his professional duties at Dubai and Thailand, hence, he was medically fit to even file his written statement within the stipulated period of thirty days.

15. Learned counsel for defendant, per contra, submits that the official work at Dubai and Thailand were of urgent nature, which required the attention of defendant. It is further contented that the defendant was prevented by sufficient cause in not filing the written statement within thirty days, however, the same has been filed before the expiry of 120 days.

16. It cannot be expected from a person to completely ignore his professional commitments and to invest his entire time in preparation of written statement. The official work which the defendant had to do at Dubai and Thailand was something which he was doing in usual course and must not have been a difficult task for him. On the other hand, preparation of defence/written statement is not an easy job for a common man, he has to recollect facts, gather material, remain constantly in touch with his counsel and has to recheck the averments made therein.



etc. This entire exercise consumes substantial time. The defendant has claimed, in para no.12 of the application, that he had to refer to the records which were bulky, to which there is no denial by the defendant.

17. Moreover as the defendant was not available in India for quite some time, preparation of written statement within the stipulated period of thirty days must have been difficult. This court is of the opinion that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within thirty days.

18. Accordingly, the delay of 88 days in filing the written statement is condoned albeit subject to payment of cost of Rs. 10,000/- to the plaintiff. The captioned IA is disposed off.

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19. Written statement has been taken on record today subject to payment of cost of Rs. 10,000/-. Replication be filed in accordance with the provisions of law. Joint document schedule along with its hard copy be filed at least a week prior to the date to be fixed before this court.

20. Learned counsels for the parties submit that the matter is listed before the Hon'ble Court on 24.04.2024. The file may be placed before the Hon'ble Court on date already fixed i.e. 24.04.2024 for further directions.

**SHUCHI LALER (DHJS),  
JOINT REGISTRAR (JUDICIAL)  
APRIL 22, 2024/cd**

*Click here to check corrigendum, if any*