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

+ **CS(OS) 614/2017**

AJAY SHARMA AND ANR Plaintiffs

Represented by: **Mr.Mudit Gupta, Advocate.**

versus

SANJAY SHARMA AND ORS Defendants

Represented by: **Mr.Aman Mehrotra, Advocate for defendant No.1.**

Mr.Jayant Mehta and Mr.Arav Kapoor, Advocates for defendant Nos.2 and 3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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13.09.2019

O.A. No.82/2019 (by defendant Nos.2 and 3)

1. By this appeal, appellant/defendant Nos.2 and 3 challenge the order dated 10th May, 2019 whereby the two applications of defendant Nos.2 and 3 being I.A. Nos.3212/2019 and 3213/2019 seeking condonation of delay in filing and refiling of the written statement were dismissed.

2. Case of the defendant Nos.2 and 3 in the applications and in the present appeal is that summons were served on defendant Nos.2 and 3 on 18th November, 2017 however, the complete paper-book was supplied to them only on 26th February, 2018. Thus the defendant Nos.2 and 3 were required to file their written statement by 28th March, 2018 however, initially defendant Nos.2 and 3 thought that since they had not much interest

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in the suit property they would not contest the suit and file the written statement and thus did not go ahead by filing written statement. However, after due deliberation and on discussion with the learned counsel, it was decided that defendant Nos.2 and 3 would file their written statement. Since the documents required to be collected to file the written statement took some time, there was delay of 180 days in filing the written statement beyond the period of 30 days which was filed on 20th August, 2018 along with an application seeking condonation of delay. Since the Registry raised objection in the application seeking condonation of delay, the application was required to be returned however, in the meantime, father of the learned counsel for defendant Nos.2 and 3 fell terminally ill and thus learned counsel for defendant Nos.2 and 3 could not personally collect the documents which were not given by the Registry even to the other newly engaged counsel and hence the delay in refiling of the written statement. Father of the learned counsel for defendant Nos.2 and 3 who was also a senior counsel of this Court finally passed away, when the application seeking condition of delay was collected, objections removed and refiled.

3. Though when this appeal came up before this Court on 29th July, 2019 no objection was made by learned counsel for the plaintiffs however, learned counsel for defendant No.1 objected to the allowing of this appeal on the ground that plaintiffs and defendant Nos.2 and 3 were in collusion. Time was granted to defendant No.1 to file reply affidavit to this appeal however, till date no reply affidavit has been filed.

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4. Considering the explanation rendered and the delay in filing the written statement initially took place because of non-supply of the complete



paper-book followed by the fact whether the defendants were required to contest the suit or not, further coupled by the fact that the father of the learned counsel for defendant Nos.2 and 3 fell terminally ill who finally passed away, this Court deems it fit to allow the appeal and condone the delay in filing and refile the written statement of defendant Nos.2 and 3 subject to consolidated cost of ₹20,000/- to be deposited with the Delhi High Court Legal Services Committee within two weeks.

5. Appeal is accordingly disposed of.

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1. Written statement of defendant Nos.2 and 3 be taken on record.
2. Learned counsel for the plaintiffs states that the affidavit of admission/denial of plaintiffs and defendant No.1 had been filed.
3. Defendant Nos.2 and 3 would also file their affidavits of admission/denial of documents within two weeks.
4. List before learned Joint Registrar on 30th October, 2019 for admission/denial of documents.
5. List before Court for settling the issues on 20th November, 2019.

MUKTA GUPTA, J.

SEPTEMBER 13, 2019

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