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

% ***Date of decision: 24th October, 2024***

+ **CM(M) 3704/2024 & CM APPL. 62792/2024
RAM SINGH**

.....Petitioner

Through: Mr. Sahil Sharma, Advocate.

versus

TEJ BAHADUR SINGH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 62793/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3704/2024

1. Petitioner is defendant No.1 before the learned Trial Court.
2. One Mr. Tej Bahadur Singh (respondent herein) had filed a suit for recovery against the petitioner and one another.
3. Despite due service, there was no appearance on behalf of the defendant No.1/Mr. Ram Singh and no written statement was either filed by him.
4. An application was moved by the defendant No.1 in September, 2023 and in such application filed under Section 5 of Limitation Act, seeking condonation of delay, he averred as under:-

“1 . That the answering defendant was admitted in the hospital for



surgery. Thereafter, he was not able to engage the layer due to financial crises.

2. That the answering defendant has not committed any mistake intentionally in late filing the written statement of this suit.”

5. Learned Trial Court while considering the above said application on 24th January, 2024 and observing that no sufficient ground had been made out, declined to take on record such written statement and while dismissing the application also ordered that the defence of defendant No.1 be also struck off.

6. Such order is under challenge.

7. When asked, Mr. Sahil Sharma, learned counsel for defendant No.1 informed that defendant No.1 was served on 6th January, 2023 and he put in appearance before the learned Trial Court on 10th January, 2023.

8. Unfortunately, no order-sheet or proceedings which took place before the learned Trial Court from 10th January, 2023 till 24th January, 2024 have been placed on record but nonetheless, it is very apparent that defendant No.1 was duly served and even appeared before the learned Trial Court on 10th January, 2023.

9. It has been baldly averred that he had undergone a *Gall Bladder* surgery and was in acute financial crisis and, therefore, he could not file written statement within the prescribed period.

10. As already noticed above, the application moved by him is too sketchy and does not inspire any confidence.

11. Since he was duly served and there was appearance from his side way back on 10th January, 2023, in absence of any justifiable reason, the learned Trial Court was fully justified in rejecting his such request seeking condonation of delay.



12. 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.”

13. It casts duty on any such defendant to file response in a time-bound manner. Despite due service and even after making appearance before the Court, it is not comprehensible as to why the defendant remained dormant for around nine months. The financial crisis cannot be permitted to be construed as a sufficient cause, always. It is also not made clear as to when, after the receipt of summons, the petitioner got admitted and was discharged in relation to said surgery. To make things worse, the record placed before this Court suggests that he was admitted on 31.10.2022 and was discharged in November 2022, which is much before 06.01.2023 when he was served with summons.

14. Interestingly, the above said order has been passed by the learned Trial Court on 24th January, 2024 and it has not been elucidated as to why the present petition has been filed with an inordinate delay of more than 8 months.

15. Be that as it may, keeping in mind the fact that despite service, defendant No.1, for the reason best known to him, did not file any written statement for around 8 months and since the reason disclosed by him do not inspire any confidence, the learned Trial Court was fully justified in dismissing his such application.



16. Finding no merit and substance in the present petition, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 24, 2024/ss