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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1099/2017 & CM No.35902/2017 (for stay)
BRIG (R) SHARVEN KUMAR MOHAN Petitioner
Through: Mr. Lalit Bhardwaj, Adv.
Versus
SAROJ JAIN ALIAS SWEETY Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

OR D E R

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27.09.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd August, 2017 in CS No.17785/2016 of the Court of Additional District Judge (ADJ)-04, South-West District, Dwarka Courts, New Delhi] allowing the application of the respondent / defendant under Section 5 of the Limitation Act, 1963 for condonation of delay in filing written statement and taking the written statement on record subject to payment of costs of Rs.1,000/- to the petitioner / plaintiff.

2. The learned ADJ has in the impugned order reasoned that the respondent / defendant joined the suit proceedings on 8th March, 2017 when she was granted time of 10 days to file the written statement; though the written statement was not filed within 10 days but was presented on the next date of hearing i.e. 8th May, 2017 along with the application aforesaid. It has further been reasoned that the cause for the delay was the renovation work in the chamber of the advocate for the respondent / defendant.

3. The counsel for the petitioner / plaintiff has argued that the respondent / defendant was served with the summons of the suit on 28th

January, 2017 and counted therefrom, the written statement filed on 8th May, 2017 was beyond the period of 90 days. It is further contended that **Rani Kusum Vs. Kanchan Devi** AIR 2005 SC 3304 relied upon by the learned ADJ has been dealt with in the subsequent order dated 2nd December, 2008 in Civil Appeal No.7209/2008 titled **Mohammed Yusuf Vs. Faij Mohammad**. It is yet further contended that Section 5 of the Limitation Act, 1963 was also wrongly invoked.

4. No ground for interfering, in exercise of jurisdiction under Article 227 of the Constitution of India, with the discretion exercised by the learned ADJ is made out. It is also felt that entertaining this petition and issuing notice thereof and resultantly staying proceedings in the suit, as is sought, will delay rather than aid in expeditious disposal of the suit. Jurisdiction under Article 227 cannot be exercised to defeat expeditious disposal of suit which was the reason behind amendment to Code of Civil Procedure, 1908 (CPC) limiting the time for filing written statement.

5. At this stage, the counsel for the petitioner / plaintiff states that this petition be admitted for regular hearing in the due course and the proceedings in the suit be stayed.

6. Though the counsel for the petitioner / plaintiff may not bother about the interest of his client but this Court has to be conscious of the same and jurisdiction under Article 227 cannot be exercised to harm the litigants and to keep the suits pending. The said contention of the counsel for the petitioner / plaintiff is thus rejected.

7. The counsel for the petitioner / plaintiff then stats that the petitioner / plaintiff is also a practising Advocate. The petitioner / plaintiff in person

also seeks stay of proceedings in suit pending full hearing in category of 'Regulars' of this petition.

8. The aforesaid conduct shows that the petitioner / plaintiff wants to avoid proving his claim in suit, perhaps knowing weakness thereof and wants to succeed in suit by graining a walkover.

9. No case for interference with the discretion exercised by the learned ADJ, in exercise of powers under Article 227, is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 27, 2017

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