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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1044/2022 & CM APPL. 42905/2022
VINEET ANAND THROUGH SPA HOLDER Petitioner
Through: Ms. Aarti Manchanda, Adv.

versus

KIRAN ANAND AND SONS HUF THROUGH KARTA &
ANR. Respondents
Through: Mr. Mayank Sawhney, Adv.
with Ms. Kanika Sawhney, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

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28.09.2022

1. This petition, under Article 227 of the Constitution of India, assails orders dated 9th December 2021 and 23rd April 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS DJ 779/2018 (*Kiran Anand and Sons HUF v. Aakanksha Anand*).

2. CS DJ 779/2018 was instituted by the Respondent 1-HUF against the petitioner (as Defendant 2) and Respondent 2 (as Defendant 1).

3. Consequent to issuance of summons in the suit, the petitioner, as Defendant 2, entered appearance, through counsel, on 15th March 2019.

4. Till 9th December 2021, no written statement, in response to the



suit, was filed by Defendant 2. In the circumstances, *vide* order dated 9th December 2021, the learned ADJ closed the right of Defendant 2 to file written statement and proceeded against the defendants *ex-parte*.

5. The petitioner-Defendant 2 moved an application before the learned ADJ under Order IX Rule 7 of the Code of Civil Procedure, 1908(CPC), for setting aside the decision to proceed against him *ex-parte*, and for granting him the right to file written statement. The said application stands dismissed by the learned ADJ *vide* order dated 23rd April 2022.

6. The aforesaid orders dated 9th December 2021 and 23rd April 2022, passed by the learned ADJ, form subject matter of challenge in the present petition, instituted under Article 227 of the Constitution of India.

7. A reading of the order dated 23rd April 2022 reveals that (i) on 15th March 2019, Ms. Vandana Anand, learned Counsel appeared before the learned ADJ and submitted that the petitioner had received the bare plaint without any annexures, which learned Counsel for the plaintiff (Respondent 1 herein) undertook to supply to Ms. Vandana Anand during the course of the day, (ii) on 10th July 2019, Defendant 2 appeared in person, and the court noted that no written statement had been filed by him till then, (iii) on 20th November 2019, a new counsel, namely, Ms. Preeti appeared for petitioner-Defendant 2, and filed a vakalatnama with the undertaking that written statement would be filed shortly along with an application for condonation of delay.



8. Thereafter, till 9th December 2021, there is no explanation whatsoever as to why no written statement was filed by the petitioner-Defendant 2.

9. Ms. Aarti Manchanda, learned Counsel for the petitioner-Defendant 2, submits that the petitioner again changed her counsel in March 2021 and that the counsel who was newly engaged by the petitioner got married in December 2021.

10. That still provides no explanation for the delay between 20th November 2019 and 9th December 2021, even if one were to ignore the period prior to 20th November 2019.

11. Ordinarily, the court exhibits leniency in the matter of taking belated written statements on record, so as to ensure that parties have full rights to prosecute their respective cases. At the same time, the leniency shown by the court cannot extend to a point where the procedure prescribed in the CPC and the time limits envisaged in that regard are completely forgotten.

12. Order VIII Rule 1 of the CPC requires a defendant to file written statement within 30 days of service of summons.

13. The said period of 30 days is extendable by a further period of 60 days under the proviso to Order VIII Rule 1, for reasons to be recorded in writing.



14. The statutorily envisaged maximum period 90 days has been held, by the Supreme Court, in ***Rani Kusum v. Kanchan Devi***¹ and ***Kailash v. Nanhku***² not to be mandatory and relaxable in an appropriate case. However, such relaxation, as per ***Kailash***², is to intended to cater to “extraordinary situations in the ends of justice”.

15. The application filed by the petitioners under Order IX Rule 7 of the CPC, as already noted hereinabove, does not explain the delay between 20th November 2019 and 9th December 2019, in the petitioner-Defendant 2 filing written statement in response to the suit.

16. No extension in that regard is forthcoming even in the present petition preferred before this Court.

17. The petitioner can hardly be allowed to take a stand that he is continuously changing counsel and that, on that basis, seek endless extensions of time to enable him to comply with the provisions of the CPC. Nor, given the fact that the petitioner is represented by counsel in India, can the fact that the petitioner resides in Dubai be a ground to interfere with the impugned order.

18. Article 227 confers supervisory jurisdiction. The High Court is not expected to interfere with discretionary orders passed by the court below, except where the exercise of discretion is manifestly illegal or perverse.

¹ AIR 2005 SC 3304

² (2005) 4 SCC 480



19. No such illegality or perversity can be said to exist in the impugned orders dated 9th December 2021 and 23rd April 2022.

20. As such, the petition is devoid of merit and is accordingly dismissed.

21. Insofar as the proceeding against Defendant 2 *ex-parte* on 9th December 2021 is concerned, however, following the judgment of the Supreme Court in *Sangram Singh v. Election Tribunal*³, it is clarified that the petitioner would be at liberty to continue to participate in the proceedings.

SEPTEMBER 28, 2022
dsn

C. HARI SHANKAR, J.

³ AIR 1955 SC 425