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

Date of decision: 23rd September, 2020

+ **C.R.P. 63/2020 & CM APPL. 23570/2020**

SHYAM SUNDER

.... Petitioner

Through: Mr. Prashant Diwan and Mr. Brajesh
Dwivedi, Advocates (M:9811937371)

versus

SHIKHA ARORA & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. Advance copy of this petition has been served. None appears for the Respondents. A very short issue has been raised.
3. The present petition has been filed challenging the order dated 28th January, 2020 by which the Id. Senior Civil Judge dismissed the application under Order VII Rule 11 CPC filed by the Respondent No.1/Defendant No.1, and granted 30 days' time for filing the written statement. The operative portion of the impugned order reads as under:

"In the present application under Order VII rule 11, read with section 151, Code of Civil Procedure, 1908 CPC, defendant no.1 has raised the objection that the present suit is not maintainable as the same has been barred under section 7 of The Family Courts Act. It is stated that as the present dispute is pertaining to the matrimonial dispute that is why the same is barred under the jurisdiction of this Court and the present court has no jurisdiction to try and entertain the present suit.

In the reply filed by the plaintiff to the said application, it is clarified that the present suit is pertaining to the self-acquired property of parents in law and the same is not

barred under section 7 of the Family Court Act

In view of the whole facts and circumstances of the present case, it is very much clear that plaintiff is the father of defendant no.2 and defendant no. 1 is the daughter in law of plaintiff against whom plaintiff is seeking the relief of permanent injunction but the same is not pertaining to a matrimonial dispute between husband and wife and with respect to matrimonial dispute between the parties. Therefore, it is hereby concluded that the suit is not barred under Section 7 of the Family Courts Act and the same can be adjudicated upon by the present court. Therefore, application at hand stands dismissed.

At an oral request of defendant no.1 an opportunity is granted to her to file a written statement within thirty days from today with the direction to supply an advance copy of the same to opposite party at least fifteen days prior to the next date of hearing”

4. The grievance of the Id. counsel for the Petitioner, who is the Plaintiff in the suit, is that the suit was filed in September, 2017 and though the Respondents/Defendants had entered appearance, they chose not to file the written statement till the decision in the application under Order 7 Rule 11.

5. Mr. Prashant Diwan, Id. counsel for the Petitioner, submits that as per the settled legal position, the pendency of an application under Order VII Rule 11 CPC would not automatically grant an extension for filing the written statement. He relies upon the judgment in ***Avnija Ahluwalia (minor) v. Bikramjit Ahluwalia and Ors., 2016 VIII AD (Delhi) 596.***

6. Further, it is submitted by Mr. Diwan, Id. counsel, that from 28th January, 2020, i.e the date of the impugned order, till date, the written statement has not been filed. He further submits that on the last date before the Sr. Civil Judge, i.e., on 10th August, 2020, the matter was taken up

through video conferencing, however, the written statement has not been filed yet. The next date in the matter is 26th October, 2020. It is also submitted by Mr. Diwan that the written statement was not filed even within 30 days, as granted by the Trial Court in the impugned order. In this case, the Court would have to pass appropriate orders in accordance with law.

7. A perusal of the impugned order shows that the time for filing of the written statement has been granted without taking into consideration the provisions of Order VIII CPC. Under the provisions of Order VIII CPC, non-filing of the written statement within time entails consequences in law. The pendency of an application under Order VII Rule 11 CPC, does not operate as an automatic stay upon filing of the written statement. In fact, the settled legal position is that the written statement should be filed irrespective of an application under Order VII Rule 11 CPC being pending. This is clear from the judgment of the Supreme Court dated 4th July 2016, in **R.K. Roja v. U.S. Rayadu and Ors., AIR 2016 SC 3282**) where the Supreme Court held:

“7. In Saleem Bhai case (supra), this Court has also held that ... "A direction to file the written statement without deciding the application under Order VII Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction of the trial court." However, we may hasten to add that the liberty to file an application for rejection under Order VII Rule 11 of the Code of Civil Procedure cannot be made as a ruse for retrieving the lost opportunity to file the written statement.”

The position of law has been clarified by the Supreme Court in the context of commercial suits, in **M/S SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt, Ltd., AIR 2019 SC 2691** wherein the Supreme Court held that:

“8..... A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

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14. Learned Counsel appearing for the Respondents also relied upon R.K. Roja v. U.S. Rayudu and Anr. (supra) for the proposition that the Defendant is entitled to file an application for rejection of plaint Under Order VII Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned Counsel appearing on behalf of the Respondents. Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records "However, we may hasten to add that the liberty to file an application for rejection Under Order 7 Rule 11 Code of Civil Procedure cannot be made as a ruse for retrieving the lost opportunity to file the written statement".

8. The Supreme Court, has recently reiterated this principle in judgment dated 18th September 2020, titled ***Sagufa Ahmed and ors. v. Upper Assam Plywood Products Pvt. Ltd. (Civil Appeal No. 3007-08/2020)***. The Court was considering the impact of the pandemic and the automatic extension of limitation and the manner in which the same is to be applied. The Supreme Court held:

*“19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”*

9. The provisions of Order VIII CPC provide a complete timeline and scheme for filing of the written statement. The said scheme would have to be followed. There are certain conditions that have to be satisfied for a party to seek condonation of delay in filing the written statement. The non-filing of the written statement within the time prescribed has consequences in law for parties. The grant of a further extension of time, in a casual manner simply upon an oral request without an application thereto being filed and explaining the delay in filing the written statement, would be contrary to law. Even the lockdown due to the pandemic can only extend the original period of limitation and not the period up to which delay can be condoned.

10. In view of the above circumstances, on the next date of hearing, the Court would hear the parties and pass appropriate orders, in accordance with law, after considering the provisions of Order VIII CPC and the settled law as set out above.

11. The petition is disposed of with the above directions. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 23, 2020

dj/Ak

