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

% **Judgment reserved on: 10th December 2024**
Judgment pronounced on: 07th January 2025

+ CM(M) 2342/2024 & CM APPL. 22074/2024 (Stay)

SH RAJEEV SHUKLAPetitioner

Through: Mr. Jaskaran Singh, Mr. Anshul
Gupta & Mr. Yash Singh, Advs

versus

SH GOPAL KRISHNA SHUKLARespondent

Through: Mr. D.D. Sharma & Mr.
Prashant Yadav, Advs.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. Petition filed under Article 227 of the Constitution of India impugns the orders dated 21.07.2022 and 01.07.2023 in CS 1831/2019 titled "Gopal Krishna Shukla Vs. Rajeev Shukla" passed by the learned trial court.
2. Petitioner is the son of the respondent and is defendant in the Suit for Permanent & Mandatory Injunction and Recovery of Damages filed by the respondent against him.
3. Summons for Settlement of Issues were sent to the petitioner on 04.12.2019, returnable for 29.01.2020.



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4. As per list of dates furnished by the petitioner, summons were received on 14.12.2019. Petitioner appeared before the court on 29.01.2019 and sought time to file written statement.
5. Written Statement along with an application for condonation of delay was filed before the court digitally on 22.09.2020. In November 2021, he filed amended written statement.
6. Vide order dated 21.07.2022, trial court dismissed the application for condonation of delay.
7. Respondent filed an application under Section 151 CPC, seeking striking off the defence. The said application was allowed vide order dated 01.07.2023 and the written statement along with amended written statement were taken of the record.
8. Learned counsel for the petitioner has submitted that petitioner had handed over all the documents and information to his counsel by March 2020 to file written statement, but unfortunately due to Covid-19 Lockdown, the said written statement could not be filed in March 2020 as the courts were shut due to Covid restrictions. It has been further submitted that courts resumed working through on-line VC hearing after July 2020, whereupon, the counsel of petitioner filed written statement along with application for condonation of delay on 22.09.2020 digitally. It is further submitted that limitation period has stopped running from 15.03.2020 by the orders passed by the Supreme Court and thus the actual delay in filing the written statement was only 60 days.
9. It is also argued that the trial court dismissed the application for



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condonation of delay on mere technical ground that the said application was under Section 151 CPC and not under the Limitation Act. It is also submitted that on the contrary, the learned trial court allowed the application of the respondent under Section 151 CPC for striking off the defence, even though, the said application should have been filed under Order 11 Rule 21 CPC.

10. The application has been vehemently opposed by the learned counsel for the respondent submitting that respondent is a senior citizen and aged about 87 years and suffering from number of ailments. Despite this, petitioner caused delay in filing the written statement, and therefore, the trial court has rightly discarded the written statement filed by him and struck off his defence.

11. The impugned order dated 21.07.2022, which is under challenge, is reproduced below:-

“21.07.2022

Present:- Sh. DD Sharma, Ld. counsel for plaintiff;

Sh. Deepak Chand Pandey, Ld. counsel for defendant.

Reply has been filed by the defendant to the application of the plaintiff for striking off the defence.

Also defendant has filed amended written statement alongwith condonation of delay application. WS has also been previously filed by the defendant which is still not taken on record as the condonation application with respect to previous WS is still pending.

It is requested by Ld. counsel for defendant that the counsel who is supposed to argue on this application is not available as he is not well.

Sh. Deepak Chand Pandey is not a proxy counsel in this matter and he has himself submitted that his name is also on the vakalatnama and Ld. counsel for defendant has not given any sufficient reason for not advancing arguments today when he is himself one of the counsel in this matter.

It is submitted by the plaintiff that he is 84 years old senior



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citizen and multiple adjournments cause difficulty to him.

In these circumstances, adjournment is allowed subject to cost of Rs.7,000/- to be paid by the defendant in DLSA-West Fund, Tis Hazari Court.

Ld. counsel for the defendant requests for a passover.

Request is allowed. Put up at 12:15 PM.

RICHIKA TYAGI
C.J-02, West, THC, Delhi
21.07.2022

At 12:15 PM

Present: Sh. DD Sharma, Ld. counsel for plaintiff

Sh. Deepak Chand Pandey, Ld. counsel for defendant.

It is submitted by Ld. counsel for defendant that he has called his main counsel and he is arriving in 15-20 minutes. It is clarified that this Court has not directed Sh. Raj pal Singh to appear before the Court if he is medically ill and Court has only sought explanation from Sh. Deepak Chand Pandey, Ld. counsel for defendant, who is present before the Court that what is the ground for him to seek adjournment and not argue the matter when he is also one of the main counsels for the defendant. It is submitted by Ld. counsel for defendant that he has not been instructed by the other counsel of the defendant to argue on the pending application. Court does not approve of this reason given by Ld. counsel for defendant as plaintiff is a senior citizen and this matter is at the stage of arguments on the pending application since 09.02.2021 and the reason that only the senior counsel can argue is not appreciated by the Court.

Arguments heard on the application for condonation of delay.

This condonation of delay application has been filed by the defendant U/s 151 CPC, wherein it should have been filed under the Limitation Act' 1963.

This application is not properly filed under the appropriate law and hence is dismissed and disposed off accordingly.

Put up for further proceedings on 30.08.2022.

RICHIKA TYAGI
C.J-02, West, THC, Delhi
21.07.2022”



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12. It is apparent that application for condonation of delay filed by the petitioner has been dismissed merely on the ground that it was filed under Section 151 CPC and not under the Limitation Act, 1963. The trial court has not addressed the application on merits. Mentioning wrong Section of law in an application by a party is typically not considered “fatal” to the case, provided the substance of the application is clear and no prejudice is caused to the opposite party or the court. The courts generally prioritize substance over form, especially if the intention and relief sought by the party are apparent. If incorrect Section does not mislead the court or the other party and no prejudice is caused, the mistake is treated as a “curable defect”. The trial court should have focussed on the content of the application rather than the technicalities of citing the incorrect Section. Procedural errors, including mentioning incorrect provision of law should not override the substantive justice. The Court has enough powers under Section 151 CPC to ensure that justice is served. The trial court underscored that it is a substance of the application that matters and not a form or the specific provision and should have considered the application on the merits regardless of respective provision under which the same was filed.

13. Thus viewed, the impugned order dated 21.07.2022, passed by the trial court in a cursory manner, cannot be sustained, and is thereby set aside. The order dated 01.07.2023 passed in consequence to the dismissal of the application of condonation of delay also consequently goes.



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14. Petition is accordingly disposed of in terms of the above order with directions to the trial court to hear arguments afresh on the application of the petitioner for condonation of delay and pass a speaking order on the merits of the application and thereafter depending upon such outcome, may proceed to dispose of the application of the respondent for striking off the defence of the petitioner. However, it is made clear that this order has been passed without prejudice to the rights and contentions of the parties on merits, which are kept reserved.

RAVINDER DUDEJA, J.

07th JANUARY, 2025

RM