

**HIGH COURT OF DELHI****Bench: Hon'ble Ms. Justice Shalinder Kaur****Date of Decision: 24<sup>th</sup> May 2024**

CIVIL MISC. MAIN NO. 2187 OF 2024

CM APPL. NO. 17639 OF 2024

**SAVITRI GOEL & ANR. ...PETITIONERS****VERSUS****PARVESH ARORA ...RESPONDENT****Legislation:**

Section 5 of the Limitation Act, 1963

Section 151 of the Code of Civil Procedure, 1908 (CPC)

Order VIII Rule 1 of the CPC

**Subject:** Petition under Article 227 of the Constitution of India challenging the dismissal of applications filed under Section 5 of the Limitation Act, 1963, read with Section 151 CPC for condonation of delay in filing the written statements in a suit for partition, possession, recovery, damages, and injunction.

**Headnotes:**

Civil Procedure Code – Condonation of Delay – Application under Section 5 of the Limitation Act, 1963 – Petitioners failed to file written statements within the prescribed period of 120 days as per Order VIII Rule 1 CPC – Petitioners sought condonation of delay of 125 days citing personal hardships and unavoidable circumstances – Trial Court dismissed the applications finding the reasons unsatisfactory – High Court held that procedural timelines should not impede justice where sufficient cause is shown – Delay condoned subject to costs. [Paras 1-22]

Condonation of Delay – Principles – High Court emphasized the directory nature of Order VIII Rule 1 CPC as interpreted in *Kailash v. Nankhu* (2005) 4 SCC 480 – Held – Courts must balance procedural compliance with the interest of justice – Exceptional circumstances and compelling reasons provided by the petitioners warrant condonation of delay. [Para 16-21]

Decision – Application for Condonation of Delay Allowed – High Court allowed the petition, set aside the Trial Court’s order, and directed that the written statements be taken on record – Imposed costs of Rs. 5,000/- each on petitioners payable to the respondent before the Trial Court. [Para 21-22]

**Referred Cases:**

- Kailash v. Nankhu (2005) 4 SCC 480
- Salem Advocate Bar Association v. Union of India AIR 2005 SC 3353

**Representing Advocates:**

**Mr. Onkar Nath for the Petitioners**

**Mr. Akshit Sharma for the Respondent**

**J U D G M E N T**

1. The issue in dispute in the present petition pertains to dismissal of the applications of the petitioners filed under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil procedure Code, 1908 (hereinafter referred as “CPC”) for taking on record the written statements.
2. It is the case of the petitioners that the petitioner no. 2 and the respondent jointly purchased property bearing no. WZ-1971, Upper Ground Floor, Plot No. 7, Rani Bagh, Delhi-110034 (hereinafter referred as “subject property”) vide sale deed dated 16.09.2013.
3. The respondent on the other hand alleges through his plaint that he entered into an oral agreement with petitioner no. 2, wherein they agreed that petitioner no. 2 would have possession of the suit property for 8 years from the date of the sale deed and later on, possession of the subject property would then be transferred to the respondent for the next 8 years. Respondent further alleges that the petitioner no. 2 failed to vacate the subject property however, petitioner no. 2 made request to allow petitioner no. 1 to reside in the suit property for a period of 6-7 months. The license was granted for Rs.

- 9000/- per month as license fee to the respondent. However, the petitioner no. 1 failed to pay the license fees from October, 2021 onwards.
4. The respondent in his plaint further stated that vide letter dated 24.02.2022 he terminated the license agreement of the petitioner no. 1 by giving legal notice of the even date and sought the possession of the suit premises on or before 31.03.2022. Despite the notice dated 24.02.2022, petitioner no. 1 failed to vacate the premises, and did not pay the arrears of license fee.
  5. This led to respondent filing civil suit bearing no. CS DJ 826/2022 on 29.08.2022 seeking partition, possession, recovery, damages and permanent & mandatory injunction along with mesne profit against the petitioners. Petitioners herein are defendants before the learned Trial Court. The summons of the suit was served upon petitioner no. 2 on 21.09.2022 whereas the summons qua petitioner no. 1 was received with report that no such person is residing at the given address. On 31.10.2022 counsel for petitioner no. 2 appeared before the learned Trial Court and filed memo of appearance moreover, summons to petitioner no. 1 were issued through post and the same were received with report of refusal. Petitioner no. 1 was deemed to be served by the learned Trial Court vide order dated 31.10.2022. The learned Trial granted 15 days time to the petitioners to file written statement.
  6. The petitioners replied to the plaint by filing separate written statements without filing application for condonation of delay along with it on 23.02.2023 which was unequivocally objected by the counsel for respondent on the ground of delay in filing. The learned Trial Court denied taking the written statements filed within 115 days from the date of service. Pursuant to the order dated 23.02.2023, the petitioners filed separate applications under Section 5 of the Limitation Act read with Section 151 CPC on 18.03.2023 seeking condonation of delay of 125 days in filing the written statement. Learned Trial Court issued notice vide order dated 17.07.2023 to the respondent to the aforesaid application. The learned Trial Court heard the arguments on the said application on 20.01.2024 and dismissed the same on the premise that there was delay of more than 120 days in filing the written statement from the date of service and the reasons stated for the delay to be condoned are not satisfactory.
  7. Aggrieved by the order dated 20.01.2024 the petitioners have assailed the said order before this court by filing a petition under Article 227 of the Constitution of India, 1950 read with Section 151 CPC passed by Additional

District Judge-04, North-West District, Rohini Court, Delhi (“Trial Court”) in Civil Suit No. CS DJ 826/2022 titled as “Smt. Parvesh Arora v. Ms. Savitri Goel & Anr.”

**Submissions by the Petitioners:**

8. Learned counsel for the petitioners submitted that the provision of Order VIII Rule 1 CPC is procedural and thus, it is incumbent upon the learned Trial Court to consider the application of the petitioners.
9. Learned counsel for the petitioners submitted that the learned Trial Court failed to appreciate that the petitioner no.1 is a widow and a senior citizen aged approximately 75 years, lacks source of income, and suffers from various illness. Moreover, she lost her son in November, 2021 followed by passing of her daughter-in-law in December, 2022. These events left her in a state of depression, preventing her from approaching the learned Trial Court. Petitioner no. 1 resides alone and there was no one to take care of her. It was submitted that in view of the said compelling circumstances, she could not engage an advocate in time to represent her before the learned Trial Court. Thus, resulting in delay in filing the written statement. In view of the above circumstances, she contacted an advocate on 30.01.2023, however, her case file got misplaced by the said advocate and finally, the written statement could be prepared on 23.02.2023.
10. Learned counsel for the petitioners further submitted that the condition of petitioner no. 2 is no less better and even he is a senior citizen as well, aged approximately 65 years, who underwent knee joint replacement surgery in May, 2022. Moreover, he was involved in his son’s wedding which took place on 26 January, 2023. Subsequently, he fell ill from 1st February, 2023 to 8th February, 2023 and due to these circumstances, the written statement was ultimately signed on 22.02.2023. It was submitted that being a layman, he did not know that the written statement was required to be filed within a time frame.
11. To support their arguments, counsel for petitioners have relied upon the following judgment:
  - (i) Kailash v. Nankhu & Ors. (2005) 4 SCC 480

**Submissions by the Respondent:**

12. Learned counsel for the respondent refuted the submissions of the petitioners by stating that the written statements were not filed in the time granted nor

have the petitioners disclosed grounds under which written statement could not be filed in time. The conduct of the petitioners is only to delay the trial as petitioner no. 1 first refused to receive the summons and thereafter did not file the written statement in time.

13. Learned counsel for the respondent heavily relied upon the last paragraph of the impugned order wherein the learned Trial Court has categorically observed that the conduct of the petitioners appears to delay the trial as they are enjoying the possession of the property whose partition is sought by the respondent.

**Analysis and conclusion**

14. Submissions head. Record and impugned order perused.
15. For adjudication of the present petition, it is expedient to refer to Order VIII Rule 1 CPC, which is reproduced herein below for ready reference:

“Order VIII

[Written statement, set-off and counter-claim] [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.] \*[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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty 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.]”

16. Order VIII Rule 1 CPC paves way for the defendant in a civil suit to file their defence within the time prescribed by the court. Upon receiving the summons, the defendant needs to file a written statement within the time specified by the court. The time limit under Order VIII Rule 1 CPC has to be observed

- however, in exceptional circumstances in order to secure interest of justice the stipulated time can be extended only if the reasons for not filing the written statement were not in control of the defendant. In such exceptional circumstances, Section 5 of the Limitation Act, 1963 ("the Act") comes into play. Section 5 of the Act grants the court discretion to condone delays if the defendant can demonstrate "sufficient cause" for not adhering to the prescribed time limits. This provision ensures that the strict enforcement of procedural deadlines does not impede the administration of justice. It recognizes that there may be genuine reasons for delays, and the primary aim is to ensure fair adjudication rather than strict adherence to procedural technicalities. While procedural laws are essential for the efficient functioning of the legal system, an overly rigid application can lead to unjust outcomes.
17. In the case of **Kailash v. Nanhku (2005) 4 SCC 480**, the Supreme Court held that the time limit under Order VIII Rule 1 is directory and not mandatory. Therefore, in exceptional circumstances, delays can be condoned even beyond the 90-day period, provided there is sufficient cause as per Section 5 of the Limitation Act. Moreover, In **Salem Advocate Bar Association v. Union of India AIR 2005 SUPREME COURT 3353** the Supreme Court reiterated that while Order VIII Rule 1 intends to expedite the filing process, it should not result in undue hardship or injustice. The provision should not be interpreted in a manner that curtails the court's power to extend time under exceptional circumstances.
  18. It is undisputed that a considerable delay of 125 days has been caused and the written statement could not be placed on record by the petitioners. The evidence of the parties is yet to start. Moreso, along with the written statement, the petitioners failed to file application seeking condonation of delay in filing the written statement. Nonetheless, the application for condonation of delay came to be filed subsequently, mentioning various circumstances due to which the written statement could not be filed in time. The learned Trial Court has found the said reasons not to be cogent and no reasonable reasons were explained by petitioners to seek delay, therefore, dismissed the application.
  19. The purpose of Order VIII Rule 1 CPC is to outline the procedure for the defendant to file a written statement in response to the plaintiff's claims, ensuring that both parties have an opportunity to present their case before the court. By providing a structured response to the plaintiff's claims, the written statement helps in streamlining the legal proceedings. It enables the

court to understand the scope of the dispute and facilitates a focused and efficient adjudication of the case.

20. The defendant has an important right to place its defence on record and therefore, from the pleadings of the parties, the issues leading to dispute between the parties are framed.
21. No doubt that the parties are to be diligent in pursuing their claims before the Court and had to adhere to the time frame as provided by the Statute, however, in view of the peculiar circumstances as put forth by the parties and in the interest of justice, petitioners are allowed to place written statement on record, subject to cost of Rs. 5,000/- each to be paid to the respondent before the learned Trial Court. 22. Consequently, the petition stands allowed.

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