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

Date of decision: 03rd FEBRUARY, 2025

IN THE MATTER OF:

+ **CS(OS) 427/2022 & I.A. 11530/2022, I.A. 39184/2024, I.A. 39185/2024**

BHARAT SINGH

.....Plaintiff

Through: Mr. Abhimanyu Mahajan, Mr. Abhimanyu Walia, Ms. Anubha Goyal, Mr. Tanishq Sirohi and Ms. Ishani Pillai, Advocates.

versus

KARAN SINGH AND OTHERS

.....Defendants

Through: Mr. Utsav Trivedi, Mr. Himanshu Sachdeva, Mr. Anudatt Dubey, Advocate for Defendant No.1
Ms. Chand Chopra and Ms. Neha Bhupathiraju Advocates for Defendant No.2
Mr. Saurav Agarwal, Ms. Sunanda Tulsyan, Mr. Anshuman Choudhary and Mr. Akhil Sachar, Advocates for Defendant No.4

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

O.A. 131/2024 & O.A. 155/2024

1. The present appeals have been filed by Defendants No.1 and 4 respectively under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 challenging an Order dated 31.05.2024 passed by the learned



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Joint Registrar dismissing the applications filed by the Applicants/Defendants No.1 and 4 seeking condonation of delay in filing the written statement.

2. The present suit is one for partition qua properties being House No.H-21, First and Second Floor, Green Park Extension, New Delhi-110016 on a plot admeasuring 463 square yards and House No.11, Sector 4, Chandigarh admeasuring 3813 square yards (*hereinafter referred to as "Suit properties"*) by metes and bounds for separate and independent possession of the share of the Plaintiff.

3. Summons was issued and the plaint was registered as a suit by this Court vide Order dated 26.07.2022. On 28.09.2022, during the course of hearing, it was submitted by the Defendants that the copies of plaint and documents are not legible and accordingly this Court vide Order dated 28.09.2022 had directed the Plaintiff to supply the legible copies of the plaint and documents to all the Defendants within one week.

4. The legible copies of the plaint and documents were received by the Defendants on 03.10.2022. On 02.11.2022, during the course of hearing, it was submitted by the Plaintiff that the matter can be referred to mediation. This submission was not opposed by the Defendants and accordingly, the matter was referred to Delhi High Court Mediation and Conciliation Centre. It was jointly submitted by the Defendants that since the matter is now being referred to mediation, they may be allowed to file their written statement only after the mediation proceedings are completed. Vide Order dated 02.11.2022, the request of the Defendants for deferring the filing of the written statement was accepted by this Court. The Order dated 02.11.2022 reads as under:



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“1. The present suit is for partition.

2. Learned Counsel for plaintiff submits that the matter can be referred for mediation as there are chances of amicable settlement.

3. Learned Counsels for other parties submit that they have no objection if the matter is referred for mediation.

4. With the consent of all the parties, the matter is referred to Delhi High Court Mediation and Conciliation Centre on 15.11.2022.

5. Learned Counsels for defendants jointly submit that since the matter is now being referred to mediation, they may be allowed to file their written statement only after the mediation proceedings are completed. Learned Counsel for defendant no. 2 submits that written statement on behalf of defendant no.2 has already been filed. Request on behalf of defendants is recorded by this court.

6. Learned Counsel for plaintiff submits that they have not received copy of written statement filed on behalf of defendant no. 2.

7. Let copy of written statement be supplied by defendant no.2 to learned counsel for plaintiff.

8. List before the court on 25.01.2023.”

5. The mediation proceedings failed, which was recorded in the proceedings dated 24.01.2023. Defendant No.1 filed his written statement on 09.04.2024. Defendant No.4 filed her written statement on 12.04.2023. The Applicant/Defendant No.1 filed an IA being No. 7900/2023 under Order



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VIII Rule 1 of CPC seeking condonation of delay of 74 days in filing the written statement and Applicant/Defendant No.4 filed an IA being No. 10408/2023 under Order VIII Rule 1 of CPC seeking condonation of delay of 77 days in filing the written statement.

6. The Ld. Joint Registrar vide Order dated 31.05.2024 dismissed the applications for condonation of delay and observed that the written statements have been filed much beyond the period prescribed in the CPC as well as Delhi High Court (Original Side) Rules, 2018. The Ld. Joint Registrar further ordered that the written statements along with affidavit of admission/denial and documents filed by the Applicant/Defendant No.1 and 4 be taken off record and the documents filed by the Plaintiff with the plaint are deemed to be admitted by the Applicant/Defendant No.1 and 4 as per relevant provisions of the Delhi High Court (Original Side) Rules, 2018.

7. It is this Order dated 31.05.2024 passed by the Ld. Joint Registrar against the present appeals have been filed.

8. Learned Counsel for the Applicant/Defendant Nos.1 and 4 submits that the time limit for filing the written statement started to run from 03.10.2022 when the legible copies of the plaint and documents were received by the Defendants. It is submitted that vide Order dated 02.11.2022, the filing of the written statement was deferred by this Court until the conclusion of the mediation proceedings and, therefore, the time for filing the written statement which had started from 03.10.2022 halted on 02.11.2022. It is further submitted that the Applicant/Defendant No.1 and 4 had filed applications bearing I.A. No.20408/2022 and I.A. No. 20486/2022 seeking deferment from filing the written statement till the conclusion of the mediation proceedings so as to obviate any technical objections sought to be



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raised in event of failure of mediation proceedings. It is submitted that the Plaintiff chose not to file a reply in said application as recorded in the Order dated 05.12.2022 and vide Order dated 03.02.2023, the said application was rendered infructuous as the mediation proceedings failed on 24.01.2023. It is submitted that the time limit for filing the written statement started again from 25.01.2023 and the written statement was filed on 12.04.2023 i.e., within a period of 120 days.

9. Learned Counsel for the Plaintiff states that the time period given under Clause 4 of Chapter 7 of the Delhi High Court (Original Side) Rules, 2018 does not permit filing of a written statement beyond the maximum time prescribed under the said Rule which is 120 days from the date of service of the Plaint and that there is no power to condone the delay after the period of 120 days. He states that time to file the written statement started on the date when the legible copies of the plaint and other documents was served on the Defendants which is 03.10.2020. He further states that the time spent in mediation will not stop the clock and therefore, the written statement filed on 09.04.2023 by Defendant No.1 and the written statement filed on 12.04.2023 by Defendant No.4 cannot be permitted to be taken on record.

10. Heard the learned Counsel for the parties and perused the material on record.

11. At the outset, this Court places its appreciation to the assistance rendered by the learned Counsels for the parties who have assisted the Court remarkably well.

12. This Court places its appreciation to the arguing Counsel for Defendant No.4 who has filed a compilation of judgments which includes



judgments for and against his case.

13. The short question that arises for consideration is whether the clock for calculating the time period to file written statement would stop running when the parties are in Mediation or not. The time period for calculating the limitation for filing written statement is governed by Rules 2 and 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, which reads as under:-

“

2. Procedure when defendant appears.—*If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—*

(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate.

(ii) the Registrar shall mark the documents produced by parties for purpose of identification, and after comparing the copies with their respective originals, if they are found correct, certify them to be so and return the original(s) to the concerned party.

4. Extension of time for filing written statement.—*If the Court is satisfied that the defendant was prevented*



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by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/ deposited. In case the defendant fails to file the affidavit of admission/ denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement. "

14. A perusal of the aforesaid Rules show that the written statement should be filed within 30 days of the service of the plaint. Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 gives power to the Court to extend the time for filing written statement for a further period not exceeding 90 days, but not thereafter. The written statement can be accepted after a period of 30 days but not exceeding 90 days after the said period of 30 days with an application of condonation of delay giving reasons as to why the written statement could not be filed within a period of thirty days.

15. A Co-ordinate Bench of this Court in Charu Aggarwal v. Ashok Kalia and Others, (2023) SCC OnLine Del 1238, after analyzing the various judgments, has held that the Rules framed by the High Courts were overriding the provisions of CPC. The Court thereafter places reliance on the judgment passed by the Division Bench of this Court in Ram Sarup Lugani v. Nirmal Lugani, 2020 SCC OnLine Del 1353, wherein the Division Bench of this Court has held that there is no power to condone delay when the time limit given in the Delhi High Court (Original Side)



Rules, 2018 has exceeded.

16. It is a settled law that the period of 120 days is sacrosanct and beyond that period written statement cannot be filed and, therefore, the time cannot be extended. The question in this case is as to whether the time when the parties are in mediation should be excluded or not.

17. The present suit is one for partition. Section 89 of the CPC provides for settlement of disputes outside Court. Section 89 of the CPC is reproduced, which reads as under:-

"89. Settlement of disputes outside the Court.--(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok Adalat: or*
- (d) mediation.*

(2) Were a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;



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(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

18. In view of Section 89 of the CPC, every Court while dealing with family disputes does make a sincere endeavour to ensure that parties reach an amicable settlement rather spending good time and money in litigation. The Apex Court in Vikram Bakshi and Others v. Sonia Khosla, (2014) 15 SCC 80, has emphasized the spirit of Mediation and has observed as under:-

"16. According to us it would have been more appropriate for the parties to at least agree to resort to mediation as provided under Section 89 CPC and make an endeavour to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner the dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroys it. And, so far as society is concerned it affects its peace. So what is required is



resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. Warren Burger, once said:

“The obligation of the legal profession is ... to serve as healers of human conflict ... we should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”

*Mediation is one such mechanism which has been statutorily brought into place in our justice system. It is one of the methods of alternative dispute resolution and resolves the dispute in a way that is private, fast and economical. It is a process in which a neutral intervenor assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. It embraces the philosophy of democratic decision-making [Alfin, et al., *Mediation Theory & Practice* (2nd Edn., 2006) Lexis Nexis].*

17. Thus, mediation being a form of alternative dispute resolution is a shift from adversarial litigation. When the parties desire an ongoing relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation. Even in those cases where relationships have turned



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bitter, mediation has been able to produce positive outcomes, restoring peace and amity between the parties.

18. There is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it may bring about a solution which may not only be to the satisfaction of the parties and, therefore, create a win-win situation, the outcome which cannot be achieved by means of judicial adjudication. Thus, life as well as relationship goes on with mediation for all the parties concerned and thus resulting into peace and harmony in the society. While providing satisfaction to the litigants, it also solves the problem of delay in our system and further contributes towards economic, commercial and financial growth and development of the country.

19. This Bench is of firm opinion that mediation is a new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.

19.1. Professor Stulberg, in his masterful comment on the drafting of the Uniform Model Mediation Act, Fairness and Mediation, begins with the understated



predicate that “the meaning of fairness is not exhausted by the concept of legal justice”. In truth, the more pointed argument advanced in the article is that legal norms often diverge quite dramatically from our notion of fairness and the notion of fairness of many disputants. Legal rules, in Stulberg's vision, are ill-equipped to do justice because of their rigidity and inflexibility.

19.2. Professors Lela Love and Jonathan M. Hyman argue that mediation is successful because it provides a model for future collaboration. The authors state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each other's goals, they will together reach a fair resolution. They cite Abraham Lincoln's inaugural address which proposed that in a democracy, “‘a patient confidence in the ultimate justice of the people’ to do justice among themselves ... is a pillar of our social order”.

19.3. Professor Carrie Menkel-Meadow presents a related point of view in making the case that settlement has a political and ethical economy of its own and writes:

“Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late twentieth century ... For many years now, I have suggested that there are other components to the achievement of justice. Most notably, I refer to the process by which we seek justice (party participation and empowerment, consensus rather than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win-lose solutions, but creative, pie-expanding or even shared solutions).”



19.4. Justice in mediation also encompasses external developments, beliefs about human nature and legal regulation. Various jurists are drawn to mediation in the belief that litigation and adversarial warring are not the only, or the best ways to approach conflict. And how optimistically and sceptically mediators assess the capabilities of individual parties and institutional actors to construct fair outcomes from the raw material of human conduct.

19.5. Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving “win-win” situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish. It is mediation that saves precious time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It is mediation which focuses on long-term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting the past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualisation of justice. ”

19. In the opinion of this Court, if parties are attempting to mediate and settle the dispute and are forced to file written statements then this will



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hamper the entire mediation process and would be detrimental to the spirit of Mediation which ensures a just solution acceptable to all the parties to the dispute thereby achieving a win-win situation. In the opinion of this Court, forcing the parties to file a written statement or to complete the pleadings during the process of mediation will prevent the parties in freely communicating with each other which they have not been able to since the dispute started. Confronted with a similar problem, while reckoning the time period for filing the written statement and as to whether the time spent in Mediation should be excluded or not, a Co-ordinate Bench of this Court in Telefonaktiebolaget L.M. Ericsson v. Lava International Limited, 2015 SCC Online Del 13903, has observed as under:-

"21. It is evident that from 31st August, 2015 till 29th October, 2015 undisputedly parties were trying to settle their dispute. Time of 59 days was spent on settlement talks which at the end of the day could not be materialized. Interim application is at the stage of conclusion of the arguments on behalf of the defendant. The advantage, if any, has gone in favour of the defendant as there is no ex-parte interim injunction in the present case. After having heard learned counsel for the parties, I am of the view that since the parties were trying to resolve their dispute amicably and that process has taken 59 days, the said period is to be excluded from the period provided in the Civil Procedure Code and Clause 4D(i) of Commercial Courts Ordinance.

22. Even otherwise, it is a well settled principle of law that if parties are negotiating settlement during the pendency of a matter, then the Court will condone the delay in filing of written statement due to such settlement talks. This Court, in its decision in Dr. Sukhdev Singh Gambhir v. Amrit Pal Singh, ILR (2003)



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“5. Having heard, counsel for the parties and taking into consideration the respective pleas urged before me, I am of the view that this is a case where the delay in filing of the written statement deserves to be condoned. Firstly it is a suit for partition concerning family members where every endeavor should be made for amicable settlement. Even otherwise, the mandate under Section 89 effort ought to be made to settle the matter. Secondly, the defendant had already filed the written statement in the suit in District Court. Hence it could not be the situation that the defendant was delaying the case, but on account of the attempts at settlement written statement was not filed”

20. The judgment of the Co-ordinate Bench in Telefonaktiebolaget L.M. Ericsson (supra) has been quoted with approval by another Co-ordinate Bench of this Court in Greaves Cotton Ltd. v. Newage Generators (P) Ltd., **2019 SCC OnLine Del 6556**, wherein after quoting the Telefonaktiebolaget L.M. Ericsson (supra), this Court has observed as under:-

"12. Hence, this court would encourage mediation as a mechanism to settle the disputes. While the mediation process is on to insist that the parties should speedily file pleadings in its very nature would be an adversarial act and not be conducive for the mediation process. Hence pendency of the mediation proceedings itself would not be sufficient ground to condone the delay in re-filing the written statement."

21. This Court has placed reliance on the two judgments of this Court, one of a Co-ordinate Bench and other of a Division Bench i.e. Hariyot Singh v. Manpreet Kaur, **2021 SCC OnLine Del 2629**, and Charu Aggarwal (supra) have also been quoted where period beyond 120 days has not been



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condoned.

22. In Charu Aggarwal (supra), the question as to whether the time spent in Mediation should be condoned or not, was not in issue. What was in issue was as to whether time limits prescribed under the Delhi High Court (Original Side) Rules, 2018 are mandatory or not and do the Courts have the power to condone delay in filing the written statement or not, wherein the Division Bench of this Court has categorically held that the said time is sacrosanct and there is no power with the Courts to condone delay beyond the period of 120 days in filing the written statement or beyond the time prescribed under the Delhi High Court (Original Side) Rules, 2018 for filing replication. There is no dispute with that proposition. Since the question that arises here for the sake of repetition is as to whether the period of 120 days would stop running when the parties are referred to Mediation or not. Hence, this Judgment will not be applicable in the present case.

23. Similarly in Harjot Singh (supra) also, the Co-ordinate Bench did not condone the delay. However it is relevant to mention that the said Court had excluded the time when the parties were in Mediation while computing the period of 120 days. Paragraph No.32 of the said judgment is reproduced, which reads as under:-

"32. However, the parties were attempting to resolve their disputes as is evident from the orders passed by this Court on 16.09.2019, 23.09.2019, 27.09.2019, 01.10.2019 and 22.10.2019. Thus, there is a good ground to condone the delay in filing of the written statement commencing for the period till 36 days, that is, till 22.10.2019."

24. Applying the said law, it is seen that the legible copy of the plaint was



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delivered to Defendants No.1 and 4 on 03.10.2022. On 02.11.2022, this Court referred the parties to Mediation.

25. The Mediation failed on 24.01.2023. The Defendant No.1 has filed a written statement on 09.04.2023 that is within the period of 120 days and Defendant No.4 has filed his written statement on 12.04.2023 which is again within 120 days, excluding the time spent in Mediation.

26. This Court is therefore inclined to exclude the time period from 02.11.2022 to 24.01.2023 for calculating the limitation. The only question therefore, which arise are whether the delay in filing the written statement which has been filed within a period of 120 days prescribed under the Delhi High Court (Original Side) Rules, 2018 but beyond the period of 30 days has been validly explained or not.

27. The Defendant No.1 has stated that he was bed-ridden for one month i.e. from 21.02.2023 till 25.03.2023. He is also working in Mumbai in Stock Market which resulted in delay of 74 days.

28. The Defendant No.4 has also given some reasons as to why there is a delay of 79 days in filing the written statement.

29. Since this Court has excluded the time spent in Mediation and since the written statement has been filed within the period of maximum 120 days excluding the period spent in Mediation, this Court is inclined to accept the written statement filed by Defendants No.1 and 4, subject to the payment of costs of Rs.5,000/- to be deposited with “Armed Forces Battle Casualties Welfare Fund”.

30. The appeals are disposed of.

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List before the learned Joint Registrar on 03.03.2025 for further



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proceedings.

SUBRAMONIUM PRASAD, J

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RJ