

## Rani vs Lokesh on 24 August, 2021

**Author: Amit Bansal**

**Bench: Amit Bansal**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CM(M) 142/2020 & CM 4681/2020 (for stay)

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RANI

..... Petitioner

Through: Mr. M.S. Bammi with Mr. Himanshu  
Sharma and Ms. Yashika Sharma,  
Advocates.

versus

LOKESH

..... Respondent

Through: Mr. Dilip Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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24.08.2021

[VIA VIDEO CONFERENCING]

1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 16th December, 2019 passed by the Additional District Judge-06, Central, Tis Hazari Courts, Delhi (Trial Court), whereby the application filed by the petitioner/defendant under Order VIII Rule I of the Civil Procedure Code (CPC) read with Section 5 of the Limitation Act seeking condonation of delay in filing written statement, was dismissed.

2. The present suit was filed by the respondent/plaintiff on 28th May, 2019 and summons were issued to the petitioner/defendant. Upon the petitioner/defendant having failed to file the written statement within 90 days, the right of the petitioner/defendant to file written statement was closed vide order dated 11th September, 2019. On 19th October, 2019 the petitioner/defendant filed an application under Order VIII Rule I of the CPC read with Section 5 of the Limitation Act for seeking condonation of delay in filing written statement.

3. The said application was opposed by the respondent/plaintiff on the ground that the petitioner/defendant was seeking to delay the proceedings in the suit and that the proposed written statement had not been filed along with the said application. The Trial Court dismissed the said application on the grounds that the application had been filed more than a month after the order dated 11th September, 2019 was passed and further, the proposed written statement had not been filed along with the said application. The Trial Court, after closing the right of the petitioner/defendant to file their written statement, proceeded to examine and discharge three witnesses of the respondent/plaintiff, without giving an opportunity to the petitioner/defendant to cross-examine the said witnesses, and closed the evidence of the petitioner/defendant.

4. Against the said impugned order, the present petition was filed before this Court and this Court vide order dated 5 th February, 2020 was pleased to issue notice and grant stay of the proceedings before the Trial Court. Thereafter, the petition could not be taken up for hearing on account of Covid restrictions and the petition came up for hearing before this Court only on 22nd July, 2021.

5. I have heard the counsels for the parties. Undoubtedly, the petitioner/defendant is at fault in not filing the proposed written statement along with the application filed under Order VIII Rule I of the CPC. But, at the same time, the said application was filed almost a month after the right to file written statement was closed on 11th September, 2019. Therefore, in the opinion of the Court, it is not a case of inordinate delay in filing of the said application. Taking into account that the present litigation is between family members, I am of the view that the written statement of the petitioner/defendant should be taken on record and the petitioner/defendant be allowed to contest the matter on merits, subject to costs being paid by the petitioner/defendant.

6. The counsel for the respondent/plaintiff submits that the petitioner/defendant continues to occupy the suit property for over a period of three years despite the fact that a decree has been passed in favour of the respondent/plaintiff and therefore, heavy costs should be imposed on account of the delay caused in the proceedings in the suit.

7. The counsel for the petitioner/defendant refutes the said submission.

8. In the facts and circumstances of the case, in the opinion of the Court, the application filed by the petitioner/defendant under Order VIII Rule I of the CPC read with Section 5 of the Limitation Act seeking condonation of delay in filing the written statement deserves to be allowed. Accordingly, the impugned order dated 16th December, 2021 is set aside and the application filed by the petitioner/defendant seeking condonation of delay in filing the written statement is allowed, subject to the petitioner/defendant paying costs of Rs.50,000 and filing the written statement on or before 10 th September, 2021. The counsel for the petitioner/defendant states that since the cost awarded is of a higher amount, it would not be possible for the petitioner/defendant to pay the same at one go on account of her financial constraints. With the consent of the parties, it is agreed that the cost of Rs. 50,000 will be paid in the following manner:-

(i) Rs. 25,000 would be paid by the petitioner/defendant to the respondent/plaintiff on or before 10th September, 2021.

(ii) The remaining cost of Rs. 25,000 would be paid on or before 31st October, 2021.

9. The Trial Court will ensure that the costs are paid before proceeding further with the matter and will proceed to hear the suit from the stage of filing of written statement. It is made clear that if the written statement is not filed on or before 10th September, 2021, the right of the petitioner/defendant to file the written statement shall stand closed.

10. The present petition is disposed of with the above directions.

AMIT BANSAL, J AUGUST 24, 2021 Sakshi R.