

A-44

% 24.10.2011

Present: Mr.Mohd.Rashid, Advocate for the petitioner.

+CM(M)No.1253/2011

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Orders impugned before this court are the orders dated 03.3.2011 and 16.8.2011. Vide order dated 03.3.2011 the defence of the defendant had been struck off; on that day it was noted that the defendant had been proceeded ex parte on an earlier date which order proceeding ex parte against the defendant had subsequently been set aside and the defendant had been directed to file written statement within 15 days subject to cost; this was on 06.10.2010; on 19.11.2010 a photocopy of the written statement had been filed; no application seeking condonation of delay in filing the written statement within 15 days had also been filed; cost had not been paid. Court, on 03.3.2011, in these circumstances, had been constrained to strike off the defence of the defendant. Matter was thereafter listed on 09.5.2011; thereafter on 16.8.2011 when the second impugned order was passed. On 16.8.2011, the matter had been listed for petitioner's evidence; witness was present but the counsel for the defendant was not available as a

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result of which the right of the defendant to cross-examine the said witness stood closed. This is the second order which has been impugned. Admittedly the order dated 03.3.2011 not having been challenged till date, it is clear that a long period of time having been elapsed for which there is no explanation whatsoever. It is clear that the order dated 03.3.2011 had been accepted by the petitioner; the order also reveals that the defendant had been proceeded ex parte on an earlier date; in spite of opportunity having been granted to him to file his written statement within a period of 15 days he did not avail of the said opportunity; in these circumstances the order dated 03.3.2011 does not in no manner suffer from infirmity. A lackadaisical and careless litigant does not deserve any sympathy. On 16.8.2011 the right of the defendant to cross-examine PW—1 had been closed; the said order disclosed that the defendant had sought an adjournment on the ground that his counsel is not well because of leg injury. In these circumstances the right to cross-examine stood closed. Keeping in view the averments made in the present application as also the submissions urged by the learned counsel for the petitioner that the petitioner is a patient of kidney failure and for the

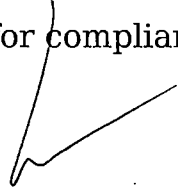
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reason that he was undergoing dialysis complete instructions could not be obtained from the petitioner, the order dated 16.8.2011 is recalled; one more opportunity is granted to the petitioner to cross-examine PW—1 on the next date of hearing which is stated to be 03.11.2011. This order is passed subject to cost of Rs.2000/-.

Petition is disposed of.

Order dasti.

A copy of this order be sent to trial court for compliance.



INDERMEET KAUR, J

OCTOBER 24, 2011
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