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

+ CM(M) 121/2016

POOJA CHOPRA

..... Petitioner

Through Mr.Vinay Kumar Bhasin, Advocate

versus

NEELAM CHOPRA

..... Respondent

Through Mr.Pratap Singh, Advocate along
with Respondent in person

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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11.08.2016

1. By the present petition, the petitioner seeks to impugn the order dated 22.12.2015 passed by the trial court dismissing the application of the petitioner under Order IX Rule 7 CPC for *setting aside* the *ex-parte* order dated 03.07.2015.
2. The facts show that the present case is nothing but a matrimonial dispute. The plaintiffs before the trial court are the father-in-law and the mother-in-law of the petitioner/defendant who have filed a suit for possession/mandatory injunction and *mesne profits* against the daughter-in-law, namely the petitioner.
3. The petitioner/defendant was served summon for 25.03.2015. As none appeared for the petitioner on the said date, the petitioner/defendant was proceeded *ex-parte*. The petitioner has filed an application under Order IX Rule 7 CPC for setting aside the *ex-parte* order.

4. A perusal of the impugned order shows that the trial court noted that defendant moved an application under Order IX Rule 7 CPC for setting aside the *ex-parte* order dated 03.07.2015, though the case was never listed on 03.07.2015. The petitioner/defendant was actually proceeded *ex-parte* on 25.03.2015. Thereafter, on 25.03.2015 the case was adjourned to 08.05.2015. The petitioner appeared on the said date. However her counsel never moved any application for setting aside *ex-parte* order. The application had been filed only on 08.10.2015. The trial court concluded that there is a delay in moving the present application. The order also states that a perusal of the application indicates that no cause, leave aside the good one, for non- appearance of the petitioner on 25.03.2015 has been mentioned. Hence, the application was dismissed.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the petitioner, however submits that no summons were served on the petitioner and thus she could not appear on 25.03.2015.

7. The learned counsel for the respondent has pointed out that the petitioner was duly served on 17.02.2015. He has relied upon the receipt placed on record and also report of the process server dated 17.02.2015. He contends that the petitioner is needlessly delaying the matter on ground of one pretext or other. Various allegations have been made against the petitioner. In my opinion, these are not germane for the disposal of the present petition.

8. Order IX Rule 7 CPC provides that where defendant has proceeded *ex-parte* and the petitioner, at or before such hearing, appears and assigns good cause for her previous non appearance, she may, upon such terms as

the court directs as to costs or otherwise, be heard in answer to the suit as if she had appeared on the day fixed for her appearance. The petitioner/defendant has to show the good cause for her previous non-appearance.

9. Keeping in view documents placed on record by the respondent, it is clear that the petitioner has been served on 17.02.2015 for the next date, i.e. 25.03.2015. Receipts on the copy of the summons are on record.

10. A perusal of the application filed by the petitioner under Order IX Rule 7 CPC shows that it does not in any manner seek to explain the fact as to why the petitioner was not able to appear on the concerned date, namely 25.03.2015. In the confused narration all that can be seen is that there are matrimonial dispute pending between parties and various cross matters appear to be pending.

11. In view of the above, averments made, there is a plausible explanations as to why the petitioner was unable to appear on that date, i.e. 25.03.2015 before the trial court.

12. In view of the nature of the dispute, I take a liberal view of the matter; I set aside the *ex-parte* order dated 25.03.2015 subject to cost of Rs.5,000/-. Needlessly to say interim order passed by the trial court dated 25.03.2015 shall continue to bind the petitioner.

13. The learned counsel for the petitioner has stated that the written statement is ready. The written statement will be filed before the trial court within a period of one week from today. No further opportunity will be granted to the petitioner for filing the written statement.

14. The trial court is requested to expeditiously dispose of the matter and any request for adjournment on the part of the petitioner should be

discouraged and allowed only in exceptional circumstances.

15. In view of the above, the petition stands disposed of.

JAYANT NATH, J.

AUGUST 11, 2016/v