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

+ CM(M) 286/2016

SHADI LAL

..... Petitioner

Through Mr.Ankur Garg, Advocate.

versus

PREM SINGH & ANR

..... Respondents

Through Mr.Umang Mittal and Mr.Vikas
Chopra, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **23.03.2016**

C.M. No.11088/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 286/2016 & C.M.No.11087/2016 (stay)

Petitioner (defendant no.1 in the Trial Court) is aggrieved by the order dated 08.3.2016 vide which his application seeking setting aside of ex parte order dated 19.01.2016 on his application under Order IX Rule 7 of the CPC had been dismissed.

Record shows that the present suit is a suit for possession and mandatory injunction. Record further shows that the petitioner/defendant no.1 had been served by way of publication and the first date of his appearance was 24.8.2015 on which date the defendant no.1 had sought time to file his written statement; on the following day i.e. 12.10.2015 Presiding Officer was leave and written statement on behalf of the defendant no.1 was not filed. Learned counsel for the petitioner on this count submits that the proxy counsel who had appeared for defendant no.1 on 12.10.2015 had not noted the

correct date which as per the record was 19.01.2016. Non-appearance of the petitioner/defendant no.1 on 19.01.2016 was for wrong noting of the date. The averments made in the application under Order IX Rule 7 of the CPC have been perused. Submission being that the counsel who had appeared on that date had not carried forward the next date of hearing in the Court Diary maintained by the learned counsel for the defendant. This was the reason why none had appeared for the petitioner/defendant no.1 and the impugned order having proceeded ex parte qua defendant no.1 was accordingly passed on 19.01.2016. The present application was filed on 04.02.2016 by the petitioner. Submission of the petitioner that a valuable right of the petitioner would be lost in case he is not allowed to plead his defence is an argument worthy of merit but this Court notes that a corresponding right has also accrued in favour of the plaintiff which also cannot be ignored.

In this background impugned order dated 19.01.2016 is set aside.

Written statement now be filed by the petitioner/defendant no.1 within a period of two weeks from today with advance copy to the petitioner who may file his replication before next date.

This order is passed subject to payment of Rs.15,000/- as costs.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

MARCH 23, 2016/ndn