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

+ **CM(M) 427/2016 and CAV 375/2016 & 16369/2016**

RAM LAKHAN Petitioner

Through Mr.D.K.Sharma and Mr.M.C.
Sharma, Advocates

versus

SURENDER KAUR Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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17.10.2016

1. By the present petition, the petitioner seeks to impugn the order dated 03.02.2016 by which his application under Section 151 CPC seeking condonation of delay in filing the written statement was dismissed.
2. A perusal of the impugned order shows that the trial court noted that the petitioner was served on 16.10.2015. Written statement was filed on the date of the impugned order i.e. 03.02.2016. Hence, written statement has been filed roughly after about 110 days. In the application filed by the petitioner for condonation of delay, the ground stated was that the file was misplaced due to which written statement could not be filed within the stipulated period.
3. The trial court noted that the application is bereft of any plausible reason to condone the delay and the fact that the file got misplaced is a vague excuse. Further, it is noted that the affidavit filed is of the defendant and not of the advocate.

4. In this case, notice was issued to the respondent. The respondent has filed a caveat. Advance copy of the caveat has been sent to the respondent. Notice has gone to the respondent by ordinary process which has been returned back stating that the address is not complete.

5. As pointed out by the learned counsel for the petitioner, the respondent is appearing before the trial court and is aware of the pendency of the present petition and she has been served with an advance copy of the caveat.

6. The issue is extremely small and pendency of the present petition would needlessly prolong the matter before the trial court.

7. In my opinion, Order 8 Rule 1 CPC prescribes that the defendant shall within 30 days from the date of the service of summons, present the written statement provided the defendant may be allowed to file the written statement for reasons to be recorded in writing but not later than 90 days. The delay in this case is about 20 days beyond the period of 90 days. It would be in the interest of justice that the delay is condoned as the petitioner has pointed out that the file of the case had been lost. The application is supported by an affidavit. In the absence of any adverse material on record, there is no reason not to accept the averment of the petitioner. Accordingly, the present petition is allowed. The written statement filed by the petitioner be taken on record.

8. The petition stands disposed of.

JAYANT NATH, J

OCTOBER 17, 2016/rb