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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 750/2014 & C.M. No.13115/2014 (stay)

MADAN MOHAN KATHURIA & ORS

..... Petitioners

Through Mr.A.S.Dateer, Advocate.

versus

INDER KUMAR KATHURIA

..... Respondent

Through Mr.Manish K.Jha, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **09.02.2016**

Order impugned before this Court is the order dated 23.7.2013 vide which the application filed by the petitioner/defendant in the Trial Court under Order IX Rule 7 of the CPC seeking setting aside of ex parte order dated 05.01.2013 had been dismissed. A review petition filed against this order has also stood dismissed vide subsequent order dated 22.3.2013.

This is an unfortunate dispute between brothers. The petitioner before this Court was the defendant in the Trial Court. Record shows that the petitioner was served in the Trial Court on 05.01.2013. He did not put in his appearance. Written statement was not filed within the stipulated time. On 23.3.2015 the present application under Order IX Rule 7 CPC came to be filed. The matter was hotly contested and even in the year 2016 orders have not been passed on this application and the

trial at all has not progressed. The suit before the Trial Court is a suit for possession which has been filed by the non-applicant/respondent. His submission is that he is the owner of the suit property and the petitioner/defendant is living there only as a licensee. This factual position is disputed by learned counsel for the petitioner; he submits that there was a family settlement between the parties which has been ignored. This submission is disputed.

Noting the above factual matrix and the chequered history between the two real siblings and a valuable right of the petitioner would be lost in case he is not allowed to plead his defence, subject to payment of Rs.20,000/- as costs petitioner is permitted to file written statement within a period of two weeks from today. Trial shall proceed on merits thereafter. Trial Court shall endeavour to dispose the petition expeditiously in view of delay already suffered by the parties.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 09, 2016

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