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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 458/2016**
NEELAM SHARMA

..... Petitioner

Through Mr. J. Singh and Mr. Siddharth
Bhambha, Advs.

versus

AMAR SINGH KALSI

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.05.2016**

CM(M) 458/2016 & C.M. No.17782/2016 & C.M. No.17783/2016

The petitioner is aggrieved by the order dated 04.05.2016 vide which the written statement which he purported to file in the Trial Court had been taken off the record. Submission is that although admittedly there was a delay and the written statement had been filed after expiry of the statutory period of 30 days but it was accompanied by the application explaining the aforementioned delay but the Trial Court did not consider it in the correct perspective.

Record shows that the present suit is a suit for recovery filed by the plaintiff against the defendant. Record further reveals that the defendant was served by affixation. The Trial Court in the impugned order has noted that the defendant had appeared for the first time on 24.02.2015. He had filed an application under Order 8 Rule 1 of the CPC seeking permission to place his written statement on record on 09.03.2015 as his service having been effected in January, 2015, the statutory period of 30 days stood expired by that date. On two dates,

cost was imposed by the Trial Court as admittedly although the application under Order 8 Rule 1 of the CPC had been filed but the counsel for the defendant was not present on these two occasions to argue the application. A cumulative cost of Rs.13,000/- was thus imposed upon the defendant. That amount was not paid. The impugned order was thereafter passed declining to take the written statement on record.

On this count, learned counsel for the defendant submits that his earlier counsel was not communicating with the party and this was the reason which had led a default on the part of the defendant; written statement had been prepared, signed and filed on record but the application under Order 8 Rule 1 of the CPC could not be argued for the reasons as aforementioned. Submission being that a valuable right of the petitioner/defendant would be lost in case he is not allowed to plead his defence.

Noting the above factual matrix, the impugned order is set aside. Written statement already filed by the petitioner/defendant is taken on record. This order is passed subject to payment of cumulative costs of Rs.20,000/- which includes the sum of Rs.13,000/- imposed by the Trial Court.

Petition disposed of.

Order be given dasti under signatures of the Court Master.

INDERMEET KAUR, J

MAY 11, 2016/A