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

+ C.R.P. 173/2016 and CM No. 39155/2016

MOHD SHAKIR KHAN Petitioner
Through Mr. Pankaj K. Sharma, Advocate.

versus

MOHD JAMAL Respondent
Through Respondent-in-person.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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03.11.2016

1. Respondent has been served. Affidavit of service has been filed by the learned counsel for the petitioner. Mohd. Jamal, the respondent is present in person.
2. By the present revision petition filed under section 151 CPC, the petitioner has impugned the order dated 14.07.2016 and also seeks recalling of the order dated 11.03.2015. As the petitioner did not file the written statement, the defence of the petitioner was closed on 11.03.2015. Further details were noted by this court in the order dated 24.10.2016 as follows:-

“A perusal of the record shows that the petitioner was served on 22.12.2014. Thereafter, as the written statement was not filed, his defence was closed on 11.03.2015. The petitioner has thereafter filed two applications which appear to have been dismissed as they sought recall of an order of wrong date.

By the impugned order dated 14.07.2016, the third application to recall the order dated 11.03.2015 has also been

dismissed.

Despite service of an advance notice on the respondent, none is present for the respondent.

In the interest of justice, dasti notice be issued through the learned counsel appearing for the respondent, returnable for 03.11.2016.”

3. By the impugned order dated 14.07.2016, the trial court dismissed the application of the petitioner filed under Section 151 CPC holding the same to be highly belated and showing a casual approach of the petitioner.

4. The present suit is filed by the respondent for possession, ejectment and recovery of rent of the property situated at Jamia Nagar, New Delhi. The respondent states that the property was given on rent to the petitioner for 11 months. In the written statement the petitioner has claimed that he is not the tenant of the premises in question. Title is claimed stating that the petitioner has purchased the flat from the respondent and has paid Rs.8,50,000/-.

5. A perusal of the application filed by the petitioner under Section 151 CPC shows that the previous counsel is blamed for not appearing or even filing the written statement. After 11.03.2015 when the defence of the petitioner was struck off, it is stated that the mother of the petitioner was seriously ill and as such, he was busy in providing medical treatment to his ailing mother. Thereafter, the applications filed by the petitioner were dismissed on account of typographical errors. Hence, it is urged that the present application be allowed and the petitioner be permitted to file written statement.

6. It is clear that there is a serious dispute between the parties and ousting the petitioner completely from filing his written statement would cause grave prejudice to the petitioner. The case of the petitioner is that after

11.03.2015 his mother was not well, on account of which, there is a delay in approaching the court. The applications subsequently filed for setting aside the order dated 11.03.2015 were dismissed due to some typographical errors as the date of the order i.e. “11.03.2015” was wrongly mentioned as “06.04.2015”.

7. Keeping in view the fact that the petitioner on affidavit has pointed out about the illness of his mother and further, the error in the first application filed by the petitioner was a curable error, it is in the interest of justice that an opportunity is granted to the petitioner to file his written statement subject to payment of costs of Rs.10,000/-. The cost shall be paid to the respondent within two weeks from today. In case the cost is paid within two weeks, the written statement already said to have been filed on the record of the trial court will be taken on record.

8. The petition stands disposed of.

9. All pending applications also stand disposed of.

JAYANT NATH, J

NOVEMBER 03, 2016
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