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

+ CM(M) 1120/2016

SATISH BAJAJ Petitioner

Through Mr. .. Bajaj, Advocate

versus

M Z SIDDIQUI Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **07.11.2016**

The petitioner has filed the present petition under Section 227 of the Constitution of India seeking to impugn the order of the Trial Court dated 09.08.2016. The petitioner has filed a summary suit for recovery. Grievance of the petitioner is that the application for leave to defend was filed belatedly by the respondent that too without any application seeking condonation of delay in filing the same. He further submits that since he filed reply to the leave to defend application of the respondent, the Trial Court concluded that filing of reply by the petitioner is an implied waiver of objection to the delay in filing of leave to defend application. Learned counsel for the petitioner submits that the conclusion of the Trial Court is contrary to law and no such waiver can be presumed.

Under Order XXXVIII Rule 3 (5) CPC defendant has to file leave to defend application within 10 days from the date of service of summons for judgment. Further, as per Order XXXVIII Rule 3 (5) and (6) CPC if defendant does not file leave to defend application within the stipulated period, the suit is liable to be decreed. In view of this, the Trial Court has

erred in holding that there is waiver of objection of delay in filing leave to defend application merely because petitioner has filed reply to the same. There are no basis for any such conclusion. The observation of the Trial Court in impugned order dated 09.08.2016 of implied waiver to the objection of delay in filing leave to defend application, is set aside.

Trial Court shall give appropriate opportunity to the respondent to file an application seeking condonation of delay in filing leave to defend applicaiton. In case any such application is filed, the same shall be adjudicated upon as per law.

This application stands disposed of.

JAYANT NATH, J

NOVEMBER 07, 2016

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