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

+ CM(M) 1277/2016 and CM Nos. 46026-27/2016

BHARAT BHUSHAN GROVER Petitioner
Through Mr.Mahavir Sharma and Mr.Satya
Narayan, Advocates.

versus

ROSHAN LAL SACHDEVA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **14.12.2016**

1. The present petition is filed under Article 227 of the Constitution of India to impugn the order dated 15.11.2016 by which the application filed by the petitioner under Order VIII Rule 1 CPC to take on record the written statement was dismissed. The admitted facts are that the petitioner was served on 13.05.2016 for appearance before the court on 09.08.2016. On 09.08.2016, time was given to file the written statement and the matter was adjourned to 13.09.2016. 13.09.2016 was declared a holiday and the matter was adjourned to 08.10.2016. On that date, though the petitioner was present in court, the counsel did not appear and hence, the defence of the petitioner was struck off.

2. The petitioner has thereafter moved the application under Order VIII Rule 1 CPC seeking condonation of delay in filing of the written statement.

In the application it is stated that the petitioner is a resident of Hyderabad. He appeared on 09.08.2016 and filed his vakalatnama. Next date was fixed as 13.09.2016. On that date the petitioner along with his counsel came from Hyderabad. But when they reached Delhi, it was informed that 13.09.2016 had been declared a holiday and the matter would now be taken up on 08.10.2016

3. Thereafter, the petitioner on 08.10.2016 also came to Delhi with the written statement prepared by his counsel in Hyderabad. Unfortunately on that date the petitioner appeared alone as he was not accompanied by his counsel. It was in those facts that the trial court noting that no application for condonation of delay in filing the written statement had been filed which the advocate had not prepared, the right of the petitioner to lead evidence was closed.

4. Learned counsel appearing for the petitioner submits that it was in those circumstances that there is a delay in filing of the written statement.

5. An advance copy of the petition has been sent to the respondent. None is present on his behalf.

6. In my opinion, sufficient explanation has been given by the learned counsel for the petitioner for the delay in filing of the written statement. In the interest of justice, subject to payment of cost of Rs. 7,500/-, the petition is allowed.

7. It is pointed out by the learned counsel appearing for the petitioner that two written statements were filed. The first one is very clumsy drafting and hence, a second written statement was prepared and filed. Hence, he submits that the second written statement is what the petitioner seeking to file.

8. Let the second written statement which has already been filed be taken on record.
9. All pending applications also stand disposed of.
10. Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

DECEMBER 14, 2016
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