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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 7/2016

SANJAY KUMAR

..... Petitioner

Through

Mr. Vishnu Sharma and Mohd. Irsad,
Advs.

versus

JASVINDER KAUR

..... Respondent

Through

Mr. Sukhmeet Singh and Mr. Pushp
Saini, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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12.01.2016

C.M. No.214/2016 & C.M.No.215/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Applications disposed of.

C.M. No.217/2016

There is a delay of 35 days in refilling. It is condoned.

Application disposed of.

CM(M) 7/2016 & C.M. No.216/2016 (for stay)

The petitioner/defendant has impugned the order dated 11.09.2015. Two applications filed by him had been declined by the said order. The first application was under Section 151 of the CPC for taking on record his written statement. In this context the orders filed of the Trial Court have been noted. In the order dated 25.09.2014, the Trial Judge had given opportunity to the defendant (appearing in person) to file his written statement within the prescribed period of

limitation. On that date, the complete set of paper book had been supplied to the defendant. Matter had been fixed for 07.11.2014. On 07.11.2014, a proxy counsel had appeared for the defendant. Written statement had not been filed. The right to file written statement stood closed. This was on 07.11.2014. Admittedly the petitioner/defendant waited up to 11.09.2015 i.e. after almost about 11 months to file the present application seeking permission to file written statement which right stood closed on 07.11.2014. No plausible explanation for not filing the application earlier has been given. Submission of the learned counsel for the petitioner that he was represented through his counsel who has betrayed his trust is not borne out from the record. It is not as if the defendant was unaware of the present proceedings. This Court notes that on the first date of hearing, the defendant had appeared in the proceedings where the complete set of paper book had been furnished to him. Thereafter on subsequent date i.e. on 07.11.2014, neither had the defendant appeared and nor his regular counsel had appeared. On the subsequent date of hearing on 05.01.2015, the defendant was again unrepresented. Neither his counsel and nor he himself had appeared. There was absolutely no justification on this count. On that date i.e. on 05.01.2015, the affidavit by way of evidence filed by the plaintiff had been taken on record and the defendant was proceeded ex-parte. Matter had been fixed for 27.01.2015. On 27.01.2015 an application under Order 9 Rule 7 of the CPC had been filed by the defendant seeking setting aside of the ex-parte order. On that date, the plaintiff had been granted permission to summon his witnesses. On the next date i.e. on

18.03.2015, again counsel for the defendant as also counsel for the plaintiff was not present. On 17.04.2015, the defendant sought adjournment as his counsel was again not present. Cost had been imposed upon him. On 14.05.2015, again the defendant sought adjournment on the ground that his counsel is not available. On that date, last opportunity had been granted to the defendant to cross-examine the witnesses of the plaintiff. On the subsequent date i.e. on 06.07.2015, the defendant again remained unrepresented. Three witnesses examined on behalf of the plaintiff stood discharged and the matter was thereafter listed for final arguments on 11.09.2015.

It was on 11.09.2015 that these two applications i.e. the first application (under Section 151 of the CPC for taking on record the written statement) and the second application under Order 9 Rule 7 of the CPC for setting aside the order dated 06.07.2015 had been filed. The impugned order had correctly noted the conduct of the petitioner/defendant for not having filed the written statement. There was no follow up of his case diligently and this being a case of gross neglect on behalf of the petitioner/defendant, both the applications were rightly dismissed.

This Court notes that the present suit has been filed by the plaintiff against the defendant seeking eviction from the suit premises. Learned counsel for the plaintiff submits that the defendant was deliberately not contesting the proceeding hoping that the matter could be stretched as far as possible and this is clearly a delaying tactic on the part of the defendant. This submission cannot be overlooked.

The impugned order in this background calls for no interference. Dismissed.

INDERMEET KAUR, J

JANUARY 12, 2016

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