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

+ C.R.P. 29/2016

NEELAM SINGH @ NEELU BHALLA..... Petitioner

Through Mr.Nishant Anand, Advocate

versus

M/S HINDUSTAN TIMBER SYNDICATE

(HUF) & ORS

..... Respondent

Through Mr.Bhupinder Singh Bhalla/defendant
ini person

Ms.Vidhi Jain, Advocate for SDMC

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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31.01.2017

1. By the present petition the petitioner seeks to challenge the order dated 24.11.2015 by which an application filed by the petitioner under Order 8 Rule 1 CPC for condonation of delay in filing of the written statement was dismissed.
2. The plaintiff/respondent No.1 filed the present suit on 10.1.2013. The petitioner was served and appeared on 1.5.2013. Thereafter after lapse of more than 30 days from the date of service of the summons, the petitioner moved an application under Order 7 Rule 11 CPC on 18.7.2013. This application was dismissed on 30.3.2015. The written statement was filed by the petitioner on 21.7.2015. The present application seeking condonation of delay in filing the written statement was filed on 7.10.2015.
3. The trial court noted the submission of the petitioner regarding the

judgment of the Supreme Court in *Salim Bhai vs. State of Maharashtra, (2003)(1 SCC 557* wherein the Supreme Court had held that a direction to file written statement without deciding the application under Order 7 Rule 11 CPC cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial court. However, the trial court held that when the application under Order 7 Rule 11 CPC was filed a period of 30 days in filing of the written statement had already expired. Hence, the court was of the view that the said judgment does not in any manner help the case of the petitioner. It secondly noted the submission of the petitioner about there being a strike in the Bar and held the said explanation to be unsatisfactory and dismissed the application.

4. I have heard learned counsel for the petitioner and also Shri Bhupender Singh Bhalla/ respondent No.1 appearing in person and learned counsel appearing for SDMC/respondent No.2.

5. It is manifest from a perusal of the facts above that the petitioners had been delaying filing of the written statement. However, keeping in view the fact that application under Order 7 Rule 11 CPC was pending adjudication which would be a factor which would have to be taken into consideration and also in the interest of justice subject to payment of costs of Rs.15,000/- to respondent No.1, the present petition is allowed.

6. Written statement already filed by the petitioner which is on record before the trial court is directed to be taken on record. Petition and all pending applications stand disposed of.

JAYANT NATH, J

JANUARY 31, 2017

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