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

+ C.R.P. No.152/2017

ALLIED REALTY PRIVATE LIMITED

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.  
Vikram Sobti and Mr. Mehul Parit,  
Advs.

versus

CHANDER MAL

..... Respondent / Review Applicant.

Through: Mr. Raman Kapur, Sr. Adv. with Mr.  
Piyush Kaushik, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **01.08.2017**

**CM No.27273/2017 (for exemption).**

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

**Review Petition No.303/2017 (under Order XLVII Rule 1 of the CPC).**

3. Review is sought of the order dated 14<sup>th</sup> July, 2017 disposing of this petition.
4. The senior counsel for the petitioner appears on advance notice.
5. This Revision Petition was preferred impugning the order of dismissal of the application of the petitioner / defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).
6. The senior counsel for the petitioner, after full hearing on 14<sup>th</sup> July, 2017, under instructions withdrew the petition but sought an opportunity to file written statement.
7. Vide order dated 14<sup>th</sup> July, 2017, while dismissing the petition as withdrawn, it was provided that subject to the respondent/plaintiff accepting

costs of Rs.1,00,000/- the written statement would be taken on record.

8. Opportunity was however given to the respondent / plaintiff to approach this Court if not agreeable thereto.

9. The respondent / plaintiff has now filed this application in terms of the order aforesaid, seeking review, averring (i) that the application of the respondent / plaintiff under Order VIII Rule 10 of the CPC for striking off of the defence of the petitioner / defendant is pending considering; (ii) that the Suit Court vide order dated 1<sup>st</sup> July, 2015 had deferred orders on the application under Order VIII Rule 10 of the CPC till the decision of the application under Order VII Rule 11 of the CPC; (iii) that the respondent / plaintiff had preferred FAO(OS) No.445/2015 against the order dated 1<sup>st</sup> July, 2015 of the Suit Court and which was disposed of with the observation that the Suit Court will take a call on the application under Order VIII Rule 10 of the CPC; (iv) that the respondent / plaintiff preferred Special Leave Petition (C) No.27103/2015 to the Supreme Court against the order dated 24<sup>th</sup> August, 2015 of the Division Bench and which SLP was disposed of by the following order:-

*“Heard learned counsel for the petitioner.*

*It is submitted by learned counsel for the petitioner that the defendant is taking extension of time to file the written statement showing total disregard to the statutory provisions as engrafted under Order 8 Rule 1 of the Code of Civil Procedure. It is also submitted by him that while taking time for filing of the written statement, the defendant has filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. Needless to say, an application under Order VII Rule 11 can be filed before filing of the written statement but the agony of the plaintiff pertains to dilatory tactics adopted by the defendant. Moving an*

*application under Order VII Rule 11 for rejection of plaint, does not automatically extend the period prescribed under Order VIII, Rule 1 of the Code of Civil Procedure, to file written statement.*

*We may also put on record that the plaintiff has filed an application under Order VIII Rule 10 of the Code of Civil Procedure.*

*We have narrated the above facts as the learned counsel for the petitioner has expressed the anguish of the plaintiff in an agonized manner. We would request the learned Single Judge to deal with the application under Rule VIII, Rule 10 of the plaintiff as well as application under Order VII, Rule 11 of the Code of Civil Procedure filed by the defendant in quite promptitude.*

*With the aforesaid observations, the special leave petition stands disposed of”.*

(v) that the application of the respondent / plaintiff under Order VIII Rule 10 of the CPC, after the order dated 29<sup>th</sup> April, 2017 of dismissal of the application under Order VII Rule 11 of the CPC, was posted on 11<sup>th</sup> July, 2017; and, (vi) that on 11<sup>th</sup> July, 2017 the petitioner / defendant took adjournment stating that it was in the process of filing Revision Petition and the matter is now posted before the learned Additional District Judge on 3<sup>rd</sup> August, 2017.

10. In the face of the aforesaid facts which were not known to the undersigned on 14<sup>th</sup> July, 2017 and to which no attention was drawn during the hearing on 14<sup>th</sup> July, 2017 while seeking opportunity to file written statement, I have enquired from the senior counsel for the petitioner / defendant, whether not it amounts to concealment of material facts.

11. I may in this context notice that with about 22 to 25 fresh matters listed for admission everyday with each paper book running into at least

more than 50 pages if not more than 100 pages, it is not possible to read each paper book cover to cover and when the parties are represented by counsels it is expected that a full disclosure would be made before obtaining any orders, especially *ex parte*.

12. The senior counsel for the petitioner / defendant states that he was not briefed about the said facts.

13. The counsel for the petitioner / defendant on enquiry, whether any of the said facts were mentioned anywhere in the paper book also, states that they were not.

14. In my view, a case of concealment is made out.

15. However Mr. Vikram Sobti, Advocate for the petitioner / defendant apologizes and states that he will be careful in future.

16. Accepting the said apology, I am at this stage not inclined to take any action.

17. However the Review Petition is allowed. Paras 6 to 12 of the order dated 14<sup>th</sup> July, 2017 to be treated as expunged from the order.

18. Needless to state that the learned Additional District Judge will proceed to hear the application under Order VIII Rule 10 of the CPC in accordance with law and without being swayed by this Court on 14<sup>th</sup> July, 2017 having given option for written statement to be taken on record and the said part having been expunged now.

*Dasti* under signature of Court Master.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 01, 2017**

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