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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1927/2014**
SANTOSH DEVI

..... Plaintiff

Through Mr.Vikash Deep and Ms.Nidhi Jain,
Advocates.

versus

GANESH SINGHAL

..... Defendant

Through Ms.Rashmi Jain, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.05.2017**

O.A.No.16/2016

This is an application filed by the defendant seeking recall of the order date 26.02.2015 vide which the right of the defendant to file written statement had been closed.

Record shows that the present suit is a suit for declaration, mandatory and permanent injunction. Summons had been served upon the defendant for 31.10.2014. The defendant had in fact appeared in person. He has sought time to file written statement. On that date plaintiff was directed to supply complete set of document along with the plaint to the defendant within three days and written statement was to be filed within 30 days thereafter meaning thereby that 33 days period had been granted to the defendant to be counted from 31.10.2014. This period expired sometime around 05.11.2014.

The written statement had admittedly been filed on 10.7.2015 i.e. after the gap of more than eight months. On 26.02.2015 the Joint Registrar had noted that defendant had not filed his written statement within stipulated period. Present application has been filed on 21.11.2015 (9 months after the order dated 26.02.2015). The averments made in the application aver that the defendant having appeared in person on 31.10.2014 was not aware of the nuances of law and because of financial constraint he was not able to engage a counsel. He arranged funds and has been able to engage a counsel in June, 2015. Written statement was prepared and filed finally on 10.7.2017. The application for recalling the order dated 26.02.2015 could not be filed again because of lack of communication gap between the defendant and his counsel. An irreparable loss would be suffered by the defendant in case he is not allowed to plead his defence.

Reply has not been filed to the aforementioned application. Learned counsel for the plaintiff submits that he does not wish to file a reply. He, however, opposes the prayer made in the application.

The averments in the application filed by the defendant have been perused. There is no doubt that the defendant on the first date had appeared in person. The affidavit of the defendant filed along with the present application has also been perused. The defendant is also present in person. He candidly submits that he did not know the legal implications of his act; that is the reason why his written statement was delayed. This Court is of the view that a valuable right would be lost to the defendant in case he is not allowed to plead his

defence as the amount involved in this suit is large. Accordingly, in the interest of justice, subject to payment of Rs.25,000/- as costs, written statement is now permitted to be filed by the defendant within three weeks with advance copy to the plaintiff who may file rejoinder before next date.

O.A. disposed of.

CS(OS) 1927/2014

Learned counsels for the parties have drawn attention of this Court to the order dated 21.3.2016 vide which in view of the enhancement of the pecuniary jurisdiction of the District Courts, this suit has to be transferred to the learned District and Sessions Judge (North District), Rohini. The order dated 21.3.2016 had directed the parties to appear before the learned District and Sessions Judge (North District), Rohini. They shall appear before the concerned Court on 17.7.2017. The suit file be remitted to District and Sessions Judge (North District), Rohini who may try this suit himself or assign it to some other competent Court.

INDERMEET KAUR, J

MAY 11, 2017
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