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

+ CM(M) 507/2016

LEELA DEVI

..... Petitioner

Through: Mr.Anil Kumar Verma and Ms.Ashu
Rani, Advocates.

versus

KAMAL AHUJA

..... Respondent

Through: Counsel for the respondent.
(Appearance not given)

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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29.05.2017

CM(M) 507/2016

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed the order dated 29th March, 2016 whereby the learned Trial Court has granted unconditional leave to defend to the respondent/defendant by allowing the application seeking leave to defend which was filed beyond stipulated period.

2. The impugned order dated 29th March, 2017 reads as under:-
'29.03.2016

Present : None.

*Matter is fixed for orders on leave to defend
application of defendant.*

After perusal of record and arguments it appears that matter involves triable issue, therefore, application of defendant for leave to defend is hereby allowed and defendant is given opportunity to contest the matter.

Defendant is directed to file WS within 30 days from today on/or before next date of hearing with an advance copy of that to the plaintiff at least seven days before next date of hearing against due acknowledgment of receiving.

Put up for filing or replication, A/D of documents and settlement of issues on 02.05.2016.

*Sd/-
CJ/SE/Saket/ND/29.03.2016'*

3. Mr. Anil Kumar Verma, Advocate for the petitioner submits that the application under Order XXXVII Rule 3(5) of Code of Civil Procedure was filed by the respondent/defendant beyond prescribed period and was accompanied with an application seeking condonation of delay. The learned Trial Court, without passing any order on the application seeking condonation of delay in filing application for grant of leave to defend, has granted unconditional leave to defend, hence the impugned order is illegal and perverse.

4. Learned counsel for the respondent does not dispute the fact that the application seeking leave to defend was filed beyond the prescribed time. He also does not dispute that the application seeking condonation of delay in filing the application seeking leave to defend has not been disposed of while granting unconditional leave to the respondent/defendant.

5. Order XXXVII Rule 3(5) of Code of Civil Procedure provides that a defendant can apply for leave within ten days from the date of service of summons for judgment. Order XXXVII Rule 3(7) of the Code provides that

that the Court may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.

6. In the instant case, the learned Trial Court, without disposing of the application seeking condonation of delay in applying for leave to defend, has granted unconditional leave to defend by a non-speaking order and without even mentioning as to what is the triable issue raised by the defendant. The learned Trial Court, after recording satisfaction and condoning the delay under Order XXXVII Rule 3(7) of Code of Civil Procedure only could have proceeded to dispose of the application filed under Order XXXVII Rule 3(5) of Code of Civil Procedure. The learned Trial Court was also required to apply its mind to the material placed on record by the respondent/defendant while seeking leave to defend. There is no discussion as to what material has been considered or appreciated by the learned Trial Court before concluding that a triable issue has been raised.

7. Since the impugned order dated 29th March, 2017 passed by the learned Trial Court does not satisfy the requirements of Order XXXVII Rule 3 sub-rules (3) and (5) of Code of Civil Procedure, the same is hereby set aside.

8. Parties are directed to appeared before the learned Trial Court on the date fixed which is stated to be 11th July, 2017.

9. The learned Civil Judge shall give an opportunity to the parties to make submissions on both the applications i.e. on the application seeking condonation of delay in filing the application seeking leave to defend as well as on the application seeking leave to defend and thereafter, pass a reasoned order.

10. With above observations, the petition is allowed.

11. A copy of this order be sent to the learned Trial Court for information and compliance and be also given dasti to learned counsel for the parties, as prayed.

CM No.19694/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 29, 2017

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