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

+ CM(M) 824/2016 & CM No.30978/2016 (Stay)

RAJINDER SINGH & ANR Petitioners

Through: Mr.Abhishek Kakkar, Advocate.

versus

KESAR SINGH KALRA Respondent

Through: Mr.S.C.Singhal, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.04.2017

1. Learned counsel for the respondent submits that cost of ₹10,000 imposed by this Court on 13th January, 2017 has not been paid by the petitioner till date.

2. On 13th January, 2017 following order was passed:

“On 26.08.2016, this Court had directed the petitioner to file an affidavit showing the reasons for non-appearance on 28.08.2014. Needful has not been done.

Learned counsel appearing for the petitioner submits that inadvertently the affidavit could not be filed. He needs an opportunity to file the affidavit.

In the interest of justice, subject to payment of costs of ₹10,000/- the affidavit be filed within four weeks.

List on 25.04.2017.”

3. Since the order dated 13th January, 2017 has not been complied with and the affidavit has been filed showing the reasons for non-appearance on 28th August, 2014, without complying with the above condition, the same cannot be taken on record.

4. At this stage, learned counsel for the petitioner submits that he may be given some time to pay the cost.

5. At request, put-up at 2:15 PM.

PRATIBHA RANI, J.

APRIL 25, 2017

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At 2:15 PM

Present: As above

1. Cost of ₹10,000 has been paid by the learned counsel for the petitioner to the learned counsel for the respondent.

2. Learned counsel for the petitioner submits that the reason for non-appearance of the petitioner on 28th August, 2014 was that the petitioner misread the date of appearance in the Court and therefore, could not appear on 28th August, 2014. Subsequently, in second week of September, 2014 when he engaged the counsel and tried to find out the status of the case, it was revealed that he had already been proceeded ex-parte on 28th August, 2014 and thereafter the application was filed for setting aside the ex-parte order which has been dismissed by the learned Trial Court and impugned herein.

3. Mr.S.C.Singhal, learned counsel appearing on behalf of the respondent submits that irrespective of the date of hearing, on receiving the summons the petitioner/defendant was required to file the written statement within thirty days. He further submits that no explanation has been given in the application for non-filing of the written statement within the stipulated time nor any extension of time was sought to file the written statement.

4. Learned counsel for the respondent further submits that even in the prayer clause of this petition, the relief sought is only for setting aside the ex-parte order and not for seeking permission to file the written statement. He further submits that in order to provide fair opportunity to petitioner/defendant to contest the suit, the Court may allow him to file the written statement subject to cost.
5. In view of the concession given by learned counsel for the respondent to provide an opportunity to the petitioner/defendant to file the written statement, the petitioner/defendant is given an opportunity to file the written statement within two weeks from the date of order, subject to payment of cost of ₹20,000 to the learned counsel for the respondent.
6. It is made clear that if written statement is not filed within two weeks or the cost is not paid, the petition shall stand dismissed.
7. The matter is stated to be listed before the learned Trial Court on 27th April, 2017.
8. The petition stands disposed of in above terms.
9. Copy of the order be given dasti to the parties and be also sent to the concerned Court for information and compliance.

PRATIBHA RANI, J.

APRIL 25, 2017
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