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

+ **CM(M) 689/2017**

MAHENDRA PRASHAD GUPTA

..... Petitioner

Through: Mr. Manish Verma and Mr. Rahul
Raheja, Advs.

Versus

POORAN CHAND

..... Respondent

Through: Mr. V.P. Singh Vidhuri, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **12.07.2017**

CM No.24037/2017 (for exemption)

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

CM(M) 689/2017 & CMs No.24038/2017 (for stay) & 24039/2017 (for condonation of delay in re-filing the petition)

3. This petition under Article 227 of the Constitution of India impugns the order dated 6th October, 2015 (of the Civil Judge-01 (South), Saket Courts, New Delhi in Civil Suit No.1170/2014 filed by the respondent/plaintiff under Order XXXVII of the Code of Civil Procedure, 1908 (CPC)) granting conditional leave to defend to the petitioner/defendant subject to deposit of Rs.2 lakhs in the form of a fixed deposit in the name of the Court, in the Court and, order dated 3rd January, 2017 of dismissal of application for review of order dated 6th October, 2015.
4. The petitioner/defendant has till date not complied with the said condition.

5. Notwithstanding the petitioner/defendant having not complied with the condition, it appears that he was permitted to file written statement.
6. The petitioner/defendant filed an application for review of the order dated 6th October, 2015 aforesaid and which review application was kept pending for inordinately long time and has been dismissed now on 3rd January, 2017 and which order has also been challenged in this petition.
7. After dismissal of the application for review, the suit was listed for evidence of the respondent/plaintiff on 7th March, 2017.
8. It is not understandable as to how, if the petitioner/defendant had not complied with the condition subject to which leave to defend was granted, the suit was permitted to proceed till the stage of respondent/plaintiff's evidence.
9. On enquiry, whether any evidence was led on 7th March, 2017, it is stated that owing to the statement of the counsel for the petitioner/defendant of intent to file this petition, no proceedings have taken place in the suit.
10. It is strange that inspite of specific provisions in CPC that mere pendency of an appeal (Order XLI Rule 5) or a revision petition (Section 115(3)) would not amount to stay of proceedings before the Suit Court, the learned Civil Judge has in defiance thereof kept the suit pending.
11. Even qua review applications, Supreme Court in ***Sasi Vs. Aravindakshan Nair*** (2017) 4 SCC 692 has held that the same have to be decided expeditiously.
12. The challenge by the petitioner to the order dated 6th October, 2015 under Article 227 of the Constitution is highly belated and liable to be

dismissed on this ground alone.

13. As far as the order dated 3rd January, 2017 is concerned, an order of rejection of a review application is not challengeable as is evident from the spirit of Order XLVII Rule 7 of CPC.

14. The counsel for the petitioner/defendant states that the petitioner/defendant is unable to comply with the condition.

15. If that be so, then the orders in accordance with law ought to follow.

16. Dismissed.

17. The learned Civil Judge-01 (South), Saket Courts, New Delhi before whom the suit is now pending is requested to submit a report on all the aforesaid aspects and a copy of this order along with the report be forwarded to the Annual Confidential Report (ACR) Committee of this Court of the concerned Civil Judge.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2017

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