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

+ CM(M) 513/2017

CHACHAN EDUCATION & WELFARE SOCIETYPetitioner
Through: Mr.Aditya Singh and Mr.Sumeet,
Advocates.

versus

M/S SUPREME ELEVATORS (P) LTDRespondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
% **05.05.2017**

CM No.17278/2017

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

CM(M) 513/2017

1. Proceedings under Article 227 of the Constitution of India is an extraordinary discretionary constitutional remedy to advance justice and not to thwart it. In exercise of power under Article 227 of The Constitution of India, this Court will interfere only when error of law is apparent on the face of record which has resulted in gross injustice.
2. The petitioner herein has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 12th April, 2017 whereby the application filed by the petitioner/defendant No.4 for seeking permission to file written statement

beyond stipulated period was allowed by the learned Trial Court subject to payment of cost of Rs.45,000/- within a week, out of which Rs.25,000/- was ordered to be deposited with National Relief Fund, NDBA and remaining cost of Rs.20,000/- was ordered to be paid to plaintiff/respondent by way of draft.

3. Learned counsel for the petitioner has submitted that vide order dated 7th January, 2017 the petitioner was permitted to file the written statement within two weeks and the case was adjourned to 15th February, 2017 for admission-denial and settlement of issues. On 15th February, 2017, the written statement was ready but at the very first call the defence of the petitioner/defendant No.4 was struck off and case was listed for plaintiff's evidence. Learned counsel for the petitioner/defendant No.4 has submitted that the counsel appeared before the learned Trial Court on the same day at 1.00 pm and even the affidavit annexed with the written was attested on 15th February, 2017 despite that the petitioner/defendant No.4 has been burdened with heavy cost of Rs.45,000/-.

4. During hearing, learned counsel for the petitioner/defendant no.4 has been specifically questioned as to why the written statement was not filed on 15th February, 2017 when he appeared before the learned Trial Court at 1.00 pm and if it was not ready at 1.00 pm i.e. at the time when he appeared before the learned Trial Court, then why permission was not sought from the learned Trial Court to file the same during the course of the day. The only answer given by learned counsel for the petitioner/defendant No.4 is that the affidavit was attested on 15th February, 2017.

5. Attestation of affidavit does not amount to filing of the written statement unless the written statement is filed in the Court within the

stipulated time. Merely because, the affidavit was attested on a particular date cannot be termed as a date of filing with the presumption of written statement being ready on that date.

6. Annexure-P7 annexed with this petition is the copy of the application filed by the petitioner/defendant No.4 with the following caption:

'An application for re-calling of the order dated 15.02.2017 passed by this Hon'ble Court and for taking written statement of defendant No.4 on record'

In the end of the application, at the place where date is to be mentioned, the date is written as '_____.03.2017'. Thus, leaving the date blank even in the application and that too in March, 2017, shows that written statement was not ready on 15th February, 2017 hence not filed by that date.

7. Since the written statement has already been allowed to be taken on record by learned Trial Court subject to payment of cost, no interference is warranted by this Court in the discretion exercised by learned Trial Court in imposing the cost of Rs.45,000/- while allowing the application filed by the petitioner/defendant No.4 for taking the written statement on record.

8. The petition has no merits and the same is hereby dismissed.

CM No.17277/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 05, 2017

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