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

+ CM(M) 639/2017

SUBODH SINGH

..... Petitioner

Through: Mr. Sunil Chaudhary, Adv.

Versus

VIJAY MAHAJAN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.09.2017

CM No.33528/2017 (of petitioner u/S 151 CPC for stay)

1. Notice of CM(M) 639/2017 was issued vide order dated 30th May, 2017. Though the petitioner did not take any steps for service of the respondent but the respondent appeared on the last date of hearing when the matter could not be taken up owing to paucity of time.
2. This application has been filed for stay of proceedings in the Trial Court.
3. Though the counsel for the respondent does not appear but *prima facie* not finding any merit in CM(M) 639/2017 itself, it is deemed appropriate to hear the counsel for the petitioner on the main petition itself.
4. The application is disposed of.

CM(M) 639/2017 & CM No.21425/2017 (for stay)

5. This petition under Article 227 of the Constitution of India impugns the order [dated 19th May, 2017 in CS DJ No.621175/16 of the Court of

Additional District Judge (ADJ)-14 (Central), Tis Hazari Courts, Delhi] closing the right of the petitioner/defendant to file the written statement.

6. The petition came up first before this Court on 30th May, 2017 when notice thereof was ordered to be issued, though no stay of proceedings in the suit, as sought, granted.

7. The counsel for the petitioner has been heard.

8. As per the impugned order dated 19th May, 2017, the petitioner/defendant was on 11th January, 2017 served with the summons of the suit for 20th February, 2017. The counsel for the petitioner/defendant did not appear before the Suit Court on 20th February, 2017, when the counsel for the respondent/plaintiff appeared and since the petitioner/defendant was reported to have been served the matter was passed over awaiting the petitioner/defendant. The counsel for the petitioner/defendant appeared thereafter at 12.30 PM, and stated that a complete set of documents had not been supplied alongwith the plaint and he will write to the respondent/plaintiff to obtain the same. Directing that the same be furnished to the counsel for the petitioner/defendant against proper receipt, written statement was ordered to be filed as per law with replication to be filed before the next date and the suit posted to 19th May, 2017.

9. No written statement was filed till 19th May, 2017 and a new counsel appeared for the petitioner/defendant on that date and again stated that complete paper book had not been supplied with the summons as also informed on 20th February, 2017.

10. The learned ADJ in the order dated 19th May, 2017 has recorded that as per record, summons were served on the petitioner/defendant on 11th January, 2017 “alongwith the copy”. The learned ADJ in the order dated

19th May, 2017 has further recorded that though the counsel for the petitioner/defendant on 20th February, 2017 had stated that he will write a letter to the respondent/plaintiff to obtain copies of documents but no such step also had been taken. Finding that more than 120 days had elapsed from the date of service, the right to file written statement was closed.

11. The counsel for the petitioner/defendant, before this Court, has not disputed that the summons of the suit were served on 11th January, 2017 and as per record, “alongwith copy”. He however states that the copy was not complete.

12. Such grounds cannot be permitted to be taken, to give a go-by to the amendment to the Code of Civil Procedure, 1908 (CPC) of the year 2002 limiting the time for filing the written statement. If complete paper book was not received, considering the time limit stipulated for filing the written statement, either immediately on receipt of summons alongwith a copy of the plaint, a letter should have been written to the counsel for the respondent/plaintiff to supply complete paper book or to supply the missing pages, specifying the missing pages or the Court file should have been inspected to make up the deficiency. Not only did the petitioner/defendant or his counsel not do any such thing but did not also appear on 20th February, 2017, for which date the summons were returnable, at the time when the suit was first called and when the counsel for the respondent/plaintiff appeared; if the petitioner/defendant had appeared then, the counsel for respondent/plaintiff could have supplied the “missing pages” there and then. It is only subsequently that the counsel for the petitioner/defendant appeared and unilaterally stated that complete paper book had not been received and he would write a letter. The direction of the Court to the counsel for the

respondent/plaintiff to supply copy of the complete paper book was conditional on the petitioner/defendant/his counsel writing a letter and without going into the aspect, whether the complete paper book had been served or not.

13. The petitioner/defendant/his counsel did not even write to the counsel for the respondent/plaintiff and proceeded on the premises that they would walk into the Court on 19th May, 2017 and repeat the request and which would be granted at their mere asking.

14. It is to curb such practises only that CPC was amended in 2002, which amendment does not appear to have sunk in and the litigants and the counsels continue to proceed under the impression that since the said provisions of CPC have been held to be directory and not mandatory, they can ignore the amendment.

15. Though the Court can, in appropriate cases extend time for filing the written statement but not in every case and at the mere asking. The present is a case falling in the latter category and there is no reason whatsoever to allow the filing of the written statement.

16. I may notice that the written statement was not filed along with this petition also and the counsel for the petitioner/defendant today also is not carrying the same, though states that he will file it within 24 hours. The same demonstrates a lackadaisical conduct/attitude and an attempt to indefinitely delay the disposal of the suit.

17. If the Courts continue to grant indulgence and allow written statements to be filed, howsoever belatedly, the amendment of year 2002 to CPC in this regard would remain only on the statute books, defeating the legislative intent. Only when the Courts send a clear unequivocal signal that

what is provided in Order VIII Rule 1 of the CPC will not be deviated from, except for reasons beyond the control of litigants/counsels, would the legislative intent be served. Until the Courts insist and demand perfection in the conduct of trial, will such perfection be served by the counsels.

18. There is no merit in the petition.

19. Dismissed.

20. The date of 23rd February, 2018 is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 13, 2017

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