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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.716/2017
MD ANWAR HUSSAIN Petitioner
Through: Mr. Kartik Khanna, Adv.
versus
MAA KALI FRUIT TRADERS Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.07.2017**

CM No.24918/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 1st March, 2017 of the Court of Additional District Judge-1 (North). Rohini Courts, Delhi in CS No.1912/16 filed by the respondent / plaintiff for recovery of Rs.10,44,000/- from the petitioner / defendant) striking off the defence of the petitioner / defendant for non-filing of the written statement.

4. Though the learned Additional District Judge in the impugned order dated 1st March, 2017 has not given any dates whatsoever as to when the petitioner / defendant was served with the summons of the suit and how many opportunities had been availed of by the petitioner / defendant for filing written statement but on reading of the paper book it is found that the summons of the suit were ordered to be issued on 20th September, 2016; the counsel for the petitioner / defendant on enquiry states that the petitioner /

defendant was served in November, 2016; he is however unable to give the date.

5. It is also borne out from the record that the petitioner / defendant appeared before the Suit Court on 6th February, 2017 and thereafter another Advocate appeared for the petitioner / defendant on 1st March, 2017 and filed a fresh *Vakalatnama*.

6. It is quite obvious that the written statement was not filed, what to talk of within 30 days of service of summons of the suit, not even within 90 days of service of summons.

7. No error can thus be found with the order of the Additional District Judge of striking off the defence of the petitioner / defendant.

8. In fact, this petition also has been filed by the petitioner / defendant at his own pace and has come up before this Court for the first time today. The petitioner / defendant along with this petition also has not filed any written statement and it is quite obvious that even after expiry of more than eight months of service of summons of the suit, the written statement has not been prepared as yet.

9. The counsel for the petitioner / defendant states that the mother of the Advocate for the petitioner / defendant was ailing and thus the written statement could not be prepared.

10. No such plea was taken before the Additional District Judge and no condonation of delay or extension of time for filing the written statement was sought. Such pleas now taken are nothing but an afterthought. Moreover, from the statement of the counsel for the petitioner / defendant it appears that one Advocate appeared for the petitioner / defendant on 6th

February, 2017 and filed his *Vakalatnama* and another Advocate appeared on 1st March, 2017 and filed his *Vakalatnama*.

11. Even in the petition, no particulars regarding the reason given are stated and only a vague averment is made.

12. The Courts, if start granting indulgence in such matters, would be setting at naught the amendment made to the Code of Civil Procedure, 1908 (CPC) in the year 2002 and the purpose thereof and which cannot be permitted.

13. There is no merit in the petition.

Dismissed.

No costs.

14. I may however add that not only does the impugned order strikes off defence of the petitioner / defendant without reference to any dates and without given any reasons, as noted above, but also thereafter proceeds to frame issues in the suit. Issues arise from material propositions of fact or law affirmed by one party and denied by other. Once the petitioner / defendant had not filed written statement, there was no occasion for framing issues. Also, Order VIII Rule 10 of the CPC requires the Court, after closing the right of the defendant to file written statement, consider whether the plaintiff is entitled to judgment forthwith or is to be called upon to prove its case. There is no such discussion also in the impugned order.

15. A copy of this order be forwarded to the learned Additional District Judge for taking corrective actions for future. A copy of this order be also forwarded to District Judge (North), Rohini Courts, Delhi. A copy of this

order be also forwarded to the ACR Committee of the learned Additional District Judge.

RAJIV SAHAI ENDLAW, J

JULY 18, 2017
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