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

+ CM(M) 1200/2016

AMITABH VERMA Petitioner
Through Mr.Bipin Kumar, Adv.

versus

SNEH LATA MALHOTRA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
17.01.2017

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1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 30.5.2016 and 30.8.2016 by which the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed and the evidence of the petitioner was closed. The petitioner was a tenant of the respondent on a rent of Rs.14,000/- per month. In 2009 the respondent filed a suit for possession and recovery of arrears of rent. On 31.3.2014 the trial court passed a decree of possession under Order 12 Rule 6 CPC. On the issue of mesne profit, damages and other issues the suit is continuing.

2. On 30.5.2016 an adjournment was sought by the petitioner by moving an application stating that the counsel had been recently engaged. The trial court noted that the matter was fixed on 21.12.2015 for Plaintiff's Evidence

and previous cost of Rs.2,000/- was not paid. The matter was adjourned to 15.3.2016 and last opportunity was granted to cross-examine PW-1 and to pay the costs. On 15.3.2016 an application under Order 7 Rule 11 CPC was moved and an adjournment was sought by counsel for the defendant/respondent. On 11.5.2016 again adjournment was sought and costs was not paid. The matter was adjourned to 30.5.2016 and same was the position. Hence, the trial court dismissed the application under Order 7 Rule 11 CPC for non-prosecution and closed the defence of the petitioner for non payment of costs.

3. The petitioner filed a review petition. The review petition was also dismissed as no grounds for review which was sought were made out.

4. Learned counsel for the petitioner at the outset has submitted that he does not press his application under Order 7 Rule 11 CPC. He submits that he is willing to pay the costs but he may be given an opportunity to defend the case and cross-examine PW-1 and lead his evidence.

5. A perusal of the application for review filed under Order 47 Rule 1 CPC would show that the contention of the petitioner is that the petitioner was under treatment for dental problems and other health problems in May 2016 and hence it is urged that the petitioner was not physically able to appear. It is also stated that new counsel was engaged who filed his fresh vakalatnama on 30.5.2016.

6. It may be noted that advance copy of the petition has been sent to the respondent but none is present on her behalf.

7. Keeping in view the averments of the petitioner in the interest of justice, subject to payment of costs of Rs.20,000/- the impugned order is set aside. The petitioner would be granted one opportunity to cross-examine

PW-1 on the date to be fixed by the trial court. The trial court may not grant any adjournment to the petitioner on the date when the matter is fixed.

8. With the above, the present petition and all pending applications stand disposed of.

9. Dasti.

JAYANT NATH, J

JANUARY 17, 2017

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