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

+ CM(M) No.810/2017

VIKRAM KUMAR

..... Petitioner

Through: Mr. T.P.S. Kang, Ms. Upasana Kang
and Mr. Shwetank Sharma, Advs.

versus

RAKESH SARAF

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.08.2017**

CM No.27249/2017 (for exemption).

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

CM(M) No.810/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 18th July, 2017 in Civil Suit No.7332/16 of the Court of Additional District Judge-04 (South), Saket Courts, New Delhi) rejecting the submission of the proxy counsel for the petitioner / defendant that he will pay the costs later on the same day and posting the suit for final arguments on 2nd August, 2017.

4. Vide order dated 3rd December, 2016 in the suit, it was held that the written statement filed by the petitioner / defendant could not be taken on record as the same was filed much after the expiry of limitation period of 90 days and also because the petitioner / defendant had failed to pay the costs imposed on him for taking on record his written statement; it was further held that the petitioner / defendant had no right to lead defence /

evidence and the defence / evidence was closed and the suit posted for final arguments on 21st January, 2017.

5. The petitioner / defendant preferred CM(M) No.110/2017 impugning the order aforesaid and which was on 27th February, 2017 disposed of with the direction that subject to petitioner / defendant paying costs of Rs.35,000/- earlier imposed as well as another costs of Rs.10,000/- i.e. total Rs.45,000/- within two weeks therefrom, the petitioner / defendant will have one last opportunity to have the written statement placed on record. It was further made clear that no further opportunity shall be granted to the petitioner / defendant in any manner whatsoever.

6. The petitioner / defendant admittedly did not pay costs within two weeks of 27th February, 2017 and in the light thereof the impugned order dated 18th July, 2017 was passed.

7. The contention of the petitioner / defendant is that though the petitioner / defendant was ready to pay the costs before the Trial Court on several dates after 27th February, 2017 but owing to Presiding Officer being on leave, the costs could not be paid.

8. The aforesaid contention cannot be accepted. Once this Court had on 27th February, 2017 granted indulgence to the petitioner / defendant to have the written statement placed on record, notwithstanding the earlier defaults, subject to payment of costs of Rs.45,000/- within two weeks therefrom, it was incumbent upon the petitioner / defendant to pay / tender the costs within two weeks and the mere fact that the hearing in the suit did not take place did not entitle the petitioner / defendant to not pay the costs. A perusal of the orders dated 6th March, 2017, 24th April, 2017 and 22nd May, 2017

in the suit shows that on the first two dates the respondent / plaintiff was present in person and on 22nd May, 2017 the Advocate for the respondent / plaintiff was present and it was for the petitioner / defendant to either tender the costs personally and if the same was not accepted, to tender the same via Registered Post or RTGS or to deposit the same in the Court, but nothing of the sort was done. No application even was filed before the Suit Court tendering the costs. The principle of ‘debtor must seek the creditor’ would apply.

9. It is quite evident that the petitioner / defendant has been merely abusing the process of the Court by obtaining orders from the Court on representation of being willing to pay the costs and thereafter not abiding by the same.

10. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2017

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