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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.854/2017 & CM No.28437/2017 (for stay).
MVL LTD Petitioner
Through: Mohd. Faisal, Adv.
versus
KSHITIJ ARORA Respondent
Through: Mr. Shailender Negi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.09.2017

1. This order is in continuation of the earlier order dated 9th August, 2017.
2. The respondent / plaintiff is reported to be served and the counsel for the respondent / plaintiff appears and has been heard.
3. I have enquired from the counsel for the petitioner / defendant, whether the petitioner / defendant has preferred any appeal against the dismissal of the application under Section 8 of the Arbitration and Conciliation Act, 1996.
4. The counsel for the petitioner / defendant replies in the negative and states that the petitioner / defendant has decided not to challenge the said order.
5. I have next enquired from the counsel for the petitioner / defendant, whether the written statement of the petitioner / defendant is ready.
6. The answer is again in the negative and the counsel for the petitioner / defendant states that the petitioner / defendant will prepare the written statement and file the same on 9th October, 2017 when the suit is listed next before the learned Administrative Civil Judge for *ex parte* evidence of the

respondent / plaintiff.

7. The counsel for the respondent / plaintiff states that the respondent / plaintiff has already led *ex parte* evidence and the date of 9th October, 2017 is for addressing final arguments.

8. The petitioner / defendant in the present case was admittedly served with summons of the suit on 27th April, 2016 for 4th July, 2016. The petitioner / defendant did not appear on 4th July, 2016 and was proceeded against *ex parte*. The petitioner / defendant claims to have in the third week of July, 2016 realised that the summons of the suit served on it were misplaced and on 29th August, 2016 filed the application under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC) for setting aside of the order proceeding *ex parte* against it. The counsel for the petitioner / defendant however states that the application was filed on 3rd August, 2016 and it has been wrongly recorded in the impugned order that it was filed on 29th August, 2016.

9. The learned Administrative Civil Judge dismissed the application, reasoning that no documents in support of the misplacement of the summons had been furnished and the application was also barred by time and the petitioner / defendant did not even appear to argue the same.

10. In the aforesaid circumstances, the written statement should have been ready by now and rather should have been filed along with the application under Order IX Rule 7 of the CPC.

11. The default of the petitioner / defendant is thus threefold. Firstly, in appearance on 4th July, 2016. Secondly, in not filing written statement along with an application under Order IX Rule 7 of the CPC and

thirdly, in appearance again on 25th April, 2017 when the application under Order IX Rule 7 of the CPC was dismissed. The petitioner / defendant has, by such conduct delayed disposal of the suit by nearly one and a half years.

12. Option has been given to the petitioner / defendant to, if agreeable to pay costs of Rs.40,000/- to the respondent / plaintiff, being permitted to file written statement on 9th October, 2017, as sought.

13. The counsel for the petitioner / defendant is not agreeable.

14. The petitioner / defendant cannot, on the one hand commit threefold default to the prejudice of the respondent / plaintiff and on the other hand, be not willing to compensate the respondent / plaintiff therefor also.

15. There is no merit in the petition.

16. Dismissed.

17. At this stage, the counsel for the petitioner / defendant states that the petitioner / defendant will pay costs of Rs.40,000/- on or before 9th October, 2017.

18. Subject to the petitioner / defendant paying costs of Rs.40,000/- to the counsel for the respondent / plaintiff on or before 9th October, 2017 and subject to the petitioner / defendant filing its written statement on the said date, the order proceeding *ex parte* against the petitioner / defendant shall stand set aside and the written statement shall be taken on record and the suit proceeded thereafter in accordance with law.

The petition is disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2017

‘pp’..