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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1228/2017, CM No.38940/2017 (for stay) and CM
No.38942/2017 (for condonation of 34 days delay in refiling).
SUNIL SHARMA Petitioner
Through: Mr. Manish Kumar Sachdeva, Adv.
versus

RAM NARAIN GODARA & ORS Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **31.10.2017**

CM No.38941/2017 (for exemption).

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

**CM(M) 1228/2017, CM No.38940/2017 (for stay) and CM
No.38942/2017 (for condonation of 34 days delay in refilling).**

3. This petition under Article 227 of the Constitution of India impugns the order [dated 3rd June, 2017 in Suit No.609272/16 of the Court of Civil Judge-III (West), Tis Hazari Courts, Delhi] dismissing the application of the petitioner / plaintiff under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) and allowing the application of the respondent / defendant under Order VIII Rule 1 of the CPC by condoning delay of 267 days in filing of the written statement subject to payment of costs by the respondents / defendants no.1&2 of Rs.1,000/- to the counsel for the petitioner / plaintiff.

4. The suit from which this petition arises was filed by the petitioner / plaintiff for permanent injunction restraining the respondents / defendants

from disturbing the use of the public street by the petitioner / plaintiff and his family members.

5. The respondents / defendants no.1&2 were served with the summons of the suit on 16th May, 2015 and filed an application under Order VII Rule 11 of the CPC. The said application was dismissed on 18th July, 2016 and the written statement was filed on 15th December, 2016.

6. The learned Additional District Judge, after so condoning the delay in filing the written statement, posted the suit for completion of pleadings, admission / denial of documents and for framing of issues on 26th August, 2017.

7. The counsel for the petitioner / plaintiff on enquiry states that issues have been framed in the suit and recording of evidence in the suit has started.

8. The petitioner / plaintiff has brought this petition nearly five months after the date of the impugned order and the petition is accompanied with an application for condonation of delay in re-filing thereof. Considering the nature of the impugned order, the petitioner / plaintiff ought to have approached this Court immediately and the delay even of five months is fatal to the nature of challenge by the petitioner / plaintiff. It is even otherwise not deemed appropriate to interfere with the proceedings in the suit at this stage, when recording of evidence is underway.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2017

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CM(M) 1228/2017