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

+ **CM(M) 981/2017**

RAJAN

..... Petitioner

Through: Ms. Zehra Khan, Adv.

Versus

R.K TOWER PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.09.2017

CM No.32715-18/2017 (all for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

**CM(M) 981/2017, CM No.32714/2017 (for stay) & CM No.32725/2017
(of the petitioner for filing additional documents)**

3. This petition under Article 227 of the Constitution of India impugns the order [dated 17th August, 2017 in Civil Suit No.57629/2016 of the Court of Additional District Judge-03 (ADJ), Patiala House Courts, New Delhi] i) granting further time of two weeks therefrom to the petitioner / defendant to comply with the order dated 23rd April, 2013 (directing the petitioner / defendant to pay a sum of Rs.2,51,402.53p to the respondent / plaintiff within four weeks therefrom); ii) directing the petitioner / defendant to pay future annual maintenance charges also to the respondent / plaintiff as per the bills raised by the respondent / plaintiff; iii) providing that failure of petitioner / defendant to make such payments will lead to defence of the petitioner / defendant being struck off and evidence led by petitioner /

defendant being not read; and, iv) observing that the said direction to pay was without prejudice to the rights and contentions of the parties and subject to adjustment at final stage.

4. No challenge was made by petitioner / defendant to the earlier order dated 23rd April, 2013 and which order has now attained finality.

5. Vide order dated 17th August, 2017 impugned in this petition, notwithstanding the default of the petitioner / defendant in making payment in terms of earlier order dated 23rd April, 2013, further time of two weeks was granted to the petitioner / defendant to pay the said amount along with interest at 18% per annum from 23rd April, 2013 because it was the contention of the counsel for the petitioner / defendant that though the petitioner / defendant was ready and willing to pay the money but the same was not accepted. Though the said contention was disputed by the counsel for the respondent / plaintiff but without going into the said aspect and without there being anything to prove that the amounts were tendered at any time or that the petitioner / defendant was willing to pay the same, indulgence was shown to petitioner / defendant by granting further time of two weeks to pay.

6. Needless to state the petitioner / defendant did not pay the amount within two weeks and has instead preferred this petition.

7. The same shows the *mala fides* of the petitioner / defendant. While before the Suit Court it was stated that the petitioner / defendant made attempts to pay the amounts in compliance of the order dated 23rd April, 2013 but after obtaining indulgence of the Suit Court, of grant of further time to pay, the order is being challenged by way of this petition. The same

is nothing but blowing hot and cold and abusing the process of the Court and which needs to be dealt with sternly and such petitions should be thrown out at the threshold with exemplary costs on the petitioner/defendant.

8. The contention of the counsel for the petitioner / defendant is that though the petitioner / defendant was not in compliance of the order dated 23rd April, 2013 but the respondent / plaintiff also did not move for striking off the defence of the petitioner / defendant and allowed the witnesses of the petitioner / defendant to be examined and cross-examined the same and the respondent / plaintiff thus waived the order dated 23rd April, 2013.

9. The orders of the Court cannot be deemed to have been waived in this manner and cannot be said to have become unenforceable. While dealing with such arguments, the harsh realities of litigation have to be taken note of. It is often found that steps taken for having the defence struck off lead to trial being derailed and defendant keeping the plaintiff embroiled in the said controversy only. Once the order had been obtained and was in force, merely for the reason respondent / plaintiff having not “executed” it, it cannot be said that the order of the Court had become a dead letter or had become unenforceable. Rather, it is found that the petitioner / defendant has been abusing the process inasmuch as the petitioner/defendant even today argues that the application for review of the order dated 23rd April, 2013 was pending.

10. I may in this regard notice that the application of the respondent / plaintiff for striking off the defence was also pending consideration and merely because the said application was not taken up for consideration, would not in any manner lead to any inference as is sought to be drawn.

11. Moreover once the petitioner / defendant is found to be taking inconsistent stands to suit his purpose before different fora and at different stages, the petitioner / defendant is not entitled to invoke any discretionary jurisdiction.

12. The counsel for the petitioner / defendant has then argued that the interest at 18% per annum is exorbitant.

13. The said argument taken at this time is also *mala fide* and mere attempt to have the notice issued and to have the disposal of the suit delayed.

14. It is next contended that further time be granted for complying with the order.

15. The said argument also has to be rejected for the reasons aforesaid.

16. The counsel for the petitioner / defendant at this stage has referred to para 6 of ***Mahboob @ Chhalla Vs. Mohd. Hussain*** MANU/UP/0383/1983 holding that the Court is not obliged to strike off the defence in every case of default.

17. The reliance on the said judgment is also misconceived inasmuch as this petition is concerned with the challenge to the order dated 17th August, 2017 and not to the order striking off the defence.

18. There is no merit in the petition which is dismissed with costs of Rs.15,000/- payable by the petitioner / defendant to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi and proof of which payment to be furnished before the Trial Court on the next

date of hearing.

19. A copy of this order be communicated forthwith to the trial Court.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 08, 2017

‘gsr’..