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

Decided on: 27th November, 2017

+ CM(M) 1176/2017 and CM No.38090/2017 (stay)

PREM CHAND KHEMKA Petitioner
Through: Mr. Saurabh Banerjee, Adv. with
Mr. Bikram Singh & Mr. Dhruv Bose,
Advocates

versus

MAYANK KHEMKA Respondent
Through: Mr. Anil Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the defendant in Civil Suit (CS No.59114/2016) instituted by the respondent against him seeking recovery of Rs.11,43,893/-. Concededly, the summons of the suit were served and the petitioner appeared before the court of Additional District Judge on 19.12.2015. Admittedly, pleadings in the nature of written statement came on record on 01.03.2016. Though at one stage, the respondent (plaintiff of the suit) had also taken the position that the filing of the written statement was belated and unauthorized, there being no prayer made for enlargement of the time for such purpose, the matter stood resolved by the order dated 15.07.2017, which is impugned by the petition at hand, to the effect that the delay is to

be condoned as the document (pleadings) were accepted by the trial Judge. The respondent, however, took objection to the said pleadings on the ground that the same had neither been signed nor verified by the petitioner (defendant), nor the person signing (Puneet Khemka) such pleadings had been duly authorized to take such steps. Reliance was placed by the petitioner on the Special Power of Attorney (SPA) executed on 29.04.2015, it being noted that the suit was filed subsequently on 22.05.2015. The petitioners tried to meet the said objection by executing another SPA dated 02.05.2017. He (defendant) also sought to rectify the deficiency and error in the pleadings by submitting a copy of the said Power of Attorney along with the verification clause of the written statement and an affidavit, which he requested to be taken on record and treated as part of the written statement filed.

2. The learned Additional District Judge by the impugned order dated 15.07.2017, however, upheld the objections of the respondent/plaintiff and directed that the written statement referred to above would be treated as “rejected” and consequently struck off the defence of the petitioner, taking the case to the stage of the plaintiff’s evidence.

3. After some hearing, the learned counsel for the respondents fairly conceded that on suitable terms, the petitioner may be allowed to file a proper written statement, duly signed and verified by him or by his duly constituted attorney, in such event with appropriate averments in such regard.

4. Having regard to the delay which has occasioned on account of

improper pleadings being submitted, and the manner in which the deficiencies were sought to be rectified, leading to protracted proceedings before the trial court, the petition is allowed and the impugned order striking off the defence of the petitioner is set aside, on costs of Rs.25,000/-, subject to further condition that the petitioner shall be obliged to submit appropriate pleadings (written statement) before the trial court in above light, on or before 13th December, 2017, which date is already fixed before the trial court.

5. The petition and accompanying application stand disposed of with these directions.

6. *Dasti.*

NOVEMBER 27, 2017

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R.K.GAUBA, J.