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

+ CM(M) 393/2018

AMAR SINGH

..... Petitioner

Through: Mr. Mrinalini Sen Gupta, Advocate
with Mr. Tanmay Yadav, Adv.

versus

GURDIAL SINGH & ANR

..... Respondents

Through: Mr. Shohit Chaudhry, Advocate with
Ms. Gunjan Bansal, Ms. Priyanka
Nayyar, & Mr. Kushagra Nigam,
Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **06.04.2018**

Caveat No.268/2018

The first respondent, who is the plaintiff of the case registered as (CS No.11805/2016) pending in the Court of additional district Judge-01, South-East has appeared on caveat having been served with advance copy.

The caveat petition stands discharged.

CM APPL.13306/2018 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM(M) 393/2018 and CM APPL.13305/2018 (stay)

Heard both sides.

Record perused.

CM(M) 393/2018

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There is no doubt that the petitioner did intentionally not appear when he was duly served first by tender of the ordinary process besides tender of process issued through registered AD post – both of which were refused – and thereafter even post-service by affixation. Undoubtedly, he admits having learnt about the proceedings in the first week of July, 2015 and yet took more than one year four months in coming up with the application under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC) submitted in the trial court on 15.09.2016. The suit in fact had been filed earlier on the original side of this court in 2012, the prayer of the first respondent (plaintiff) being for damages in sum of Rs.1 crore for defamatory imputation having been made by the defendants that includes the petitioner as the first defendant. The suit had been transferred from the original side of this court to the district courts, upon change of pecuniary jurisdiction, by order dated 17.03.2016. After the petitioner (defendant) had been set *ex parte*, the case had not made any meaningful progress, the plaintiff not having examined even a single witness.

It is noted that there is inherent contradiction in the view taken in the impugned order dated 07.02.2018 whereby on one hand the trial court has found the reasons for delay justified and, therefore, condoning the same on application under Section 5 of the Limitation Act, while on the other it has proceeded to dismiss the prayer under Order IX Rule 7 CPC.

In the above facts and circumstances, it is deemed just and proper that the petitioner be allowed to participate in the proceedings in the civil suit, but subject to terms. Costs of Rs.50,000/- is imposed against him, which he must pay while submitting the written statement within thirty days hereof,

with caution that the written statement will not be taken on record unless the cost is tendered and paid and that the time for filing the written statement will not be enlarged for any reason whatsoever.

The impugned order is set aside.

The application of the petitioner under Order IX Rule 7 CPC stands allowed.

The petition and the application filed therewith stand disposed of.

R.K.GAUBA, J.

APRIL 06, 2018

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