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

+ CM(M) 452/2018 & CM APPL. 15177/2018

MAULANA AZAD

..... Petitioner

Through Mr. Moni Cinmoy, Mr. Arvind
Kumar Pandey, Mr. Ajay Tiwari,
Advs. with petitioner in person.

versus

SULTAN KHAN

..... Respondent

Through Mr. Arjun Nanda, Mr. Surya Kamal
Mishra, Advs.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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18.12.2018

The petitioner assails the impugned order dated 31.03.2018 of the learned ADJ-03, Dwarka Courts, Delhi in CS no. 711/17 whereby the application filed by the applicant seeking recalling of the order dated 01.02.2018 to file the written statement by seeking condonation of delay in filing the written statement, was declined, it having been *inter alia* observed to the effect that the application under Order VII Rule 11 CPC had been filed by the petitioner herein which was declined vide order dated 01.02.2018 and vide the order dated 01.02.2018 it is reflected that nothing had prevented the petitioner herein to make submissions as made in the application under Order VII Rule 11 CPC. *Inter alia* it has been submitted on behalf of the petitioner herein that the submissions that have been made through the application under Order VII Rule 11 CPC that was made by the

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petitioner herein in relation to the aspect that there was no PPF account in the name of the plaintiff and his mother ever opened and what had been opened, was a monthly income scheme in relation to which the application / the petitioner herein had filed an application under Order VII Rule 11 CPC is corroborated through the affidavit that has been filed on behalf of the plaintiff of the suit vide averments made in para 5 of the affidavit of the plaintiff dated 27.03.2018 which reads to the effect : -

“5. The plaintiff says that the defendant was doing private service and in the month of November, 2003, the defendant requested the plaintiff for depositing a sum of Rs.6,00,000/- (Rupees Six Lakhs only) in his account as the defendant was required to show his solvency and it was mutually agreed between the parties that the plaintiff would deposit a sum of Rs.6,00,000/- (Rupees Six Lacs only) in MIS account which was wrongly mentioned as PPF account in the main plaint (PPF account be read as MIS account) with post office jointly in the name of defendant and Mrs. Muntazi the wife of the Plaintiff. It was also agreed that the monthly interest of the said account will be withdrawn by the defendant through the plaintiff and the same will be kept by the plaintiff and further on maturity, the maturity amount was agreed to be refunded by the defendant to the plaintiff.”

On behalf of the respondents, the application has been opposed submitting to the effect that there has been a deliberate delay on behalf of the petitioner and non-submission of the written statement within the stipulated period of time and dilatory tactics have been adopted.

Without any observations on the merits or demerits of the case and the contentions that have been raised on behalf of the petitioner in relation to the
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aspect of the opening of the MIS account and PPF account as adverted to in para 5 of the affidavit of the plaintiff, in view of the affidavit that has been filed on behalf of the plaintiff and the submissions that have been made on behalf of the petitioner herein through the application under Order VII Rule 11 CPC, it is considered appropriate in the interest of justice that the *lis* be adjudicated on merits and thus the petitioner is directed to file the written statement subject to payment of costs of Rs.30,000/- to the respondent. The written statement of the petitioner stated to be already pending before the learned Trial Court, is directed to be taken on record subject to payment of costs of Rs.30,000/- on the date of hearing fixed before the learned Trial Court i.e. 17.01.2019.

The petition is disposed of accordingly.

Nothing stated herein shall tantamount to an expressions on the merits or demerits of the submissions to be made by the parties before the learned Trial Court or the contentions that have been raised by the plaintiff through the affidavit submitted by the plaintiff.

ANU MALHOTRA, J

DECEMBER 18, 2018/MK

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