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

+ **CRL.M.C. 3255/2018**

NARENDER PAUL SONI

..... Petitioner

Through: Mr. Sanjeev Sahay, Mr. Anshul
Duggal and Ms. Himangi Kapoor,
Advs.

versus

ARTI SONI & ORS

..... Respondents

Through: Mr. Prashant Mendiratta, Adv. for R-
1.
Mr. Vijay Gupta, Adv. for R-2 to R-4.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **10.08.2018**

Vide order dated 27th April, 2016 of trial court defence of the petitioner (respondent no.1) was struck off inasmuch as he was proceeded against ex-parte on account of non filing of documents and non payment of costs of ₹10,000/-, ₹2,000/- and ₹25,000/- imposed vide orders dated 30/08/2014, 24/06/2015 and 02/03/16.

Petitioner filed appeal before the Sessions Judge which has been dismissed by the order impugned by this petition under Section 482 Cr.P.c.

Learned counsel for the petitioner submits that costs were offered through counsel for respondent nos.2 to 4 but was not accepted by the respondents.

Relevant portion of the order reads as under :-

“Cost of ₹10,000/- imposed vide order dated 30.08.2014, cost of ₹2,000/- imposed vide order dated 24.06.2015 and cost of ₹25,000/- vide order dated 02.03.2016 remain unpaid by the respondent no.1.

As far as compliance of last order is concerned, the directions were categorically clear that respondent no.1 was under a mandate to file documents in support of his affidavit of income and expenditure and the consequences for non-compliance were also specified in categorical terms. Despite clear, categorical and express directions and imposition of costs on three occasions, respondent no.1 has failed to comply with the Order. The acts of the respondents are causing unnecessary delay in trial of the case. There is nothing on record which would justify giving of another opportunity to the respondent. In these circumstances, the defence of respondent no.1 is hereby struck off and he is also proceeded ex parte in view of the Order dated 02.03.2016.”

Learned counsels for the respondents submit that respondent nos. 2 to 4 are relatives of petitioner. Respondent nos. 2 and 3 are settled in U.K. and respondent no. 4 is settled in Bangalore. It is submitted that these respondents never stayed with respondent no.1 (Complainant) in a ‘shared household’ and have been impleaded by the respondent no.1 to harm them. These respondents have filed application before the trial court for deletion of their names but same has yet not been disposed of by the trial court.

Learned counsel for respondent no.1 submits that costs were never offered nor is there any reference of such refusal by the respondent no.1 in the orders of the trial court.

Learned counsel for the petitioner submits that all the documents which were in the power and possession of the petitioner have already been filed along with the affidavit. A categorical statement has been made that petitioner does not have any other documents. He further submits that if alleged documents were not filed, trial court, at best, could have drawn adverse inference but could not have struck off the defence and proceeding the petitioner ex parte, on this count.

Learned counsel for respondent no.1 submits that English translation of the documents in Belgium language have not been filed. Learned counsel for the petitioner submits that English translation of the said documents are already on record of trial court.

Be that as it may, I am of the view that since affidavit along with the documents had been filed by the petitioner his defence ought not have struck off by the trial court and petitioner ought not to have been proceeded ex-parte merely on the ground of non-filing of documents. As per the petitioner, no other document is available with him.

Accordingly, impugned order is set aside. Trial court is directed to dispose of the application of interim maintenance of the respondent no.1 on the date fixed, that is, 18th August, 2018, in accordance with law, subject to

however petitioner paying arrears of costs on the next date of hearing before the trial court.

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

AUGUST 10, 2018
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