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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 885/2018
NARENDER KUMAR @ DEVENDER Petitioner
Through Ms. Deepali Gupta, Adv.

versus

UMESH KUMAR @ UMESH Respondent
Through Mr. Nitin Sharma, Mr. Sagar Gupta,
Advs.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **11.10.2018**

Submissions made on behalf of either side.

Vide the present petition, the petitioner assails the impugned orders dated 05.09.2017 and 17.10.2017 of the Court of the Civil Judge-08 (Central)/THC, Delhi in Suit No. 1604/17 (Old No. 426/17) whereby initially vide the impugned order dated 05.09.2017, the written statement submitted on behalf of the defendant i.e. the petitioner herein on the said date was not taken on record and the defence of the defendant was struck off taking into account the factum that the service of the summons of settlement of issues was effected on 06.05.2017 and the written statement was not filed in time. It is indicated vide the impugned order dated 05.09.2017 as also reflected through the copy of the application under Order VIII Rule 1 read with Section 151 CPC and application under Section 5 of

Limitation Act, 1963 placed on record alongwith the present petition that the defendant could not file the written statement within the stipulated time due to the communication gap between the petitioner and his counsel and his counsel and his counsel was also unwell as he had suffered from a heart attack.

The other impugned order dated 17.10.2017 vide which the application filed under Section 151 CPC filed by the petitioner was declined taking into account the factum that the previous application under Section under Order 8 Rule 1 CPC filed on behalf of the defendant i.e. the petitioner herein had been declined on 05.09.2017 indicates that it had been submitted in the said application that the non-filing of the written statement within the stipulated period was neither intentional nor negligent but it was because of the poor health of the defendant.

During the course of the submissions that have now been made on behalf of the petitioner, it has been submitted that the reasons for non submission of the written statement within the stipulated period of time were in fact depicted through the application that had been filed under Section 151 CPC which had sought the setting aside of the order dated 05.09.2017 submitting to the effect that there had been a delay in filing of the written statement in as much as the main counsel's elder sister had expired and the defendant also could not contact his counsel as he had suffered from a heart attack and that the doctor advised him to take medicine and to take complete rest because he was a senior citizen of 75 years old and it has been submitted on behalf of the petitioner that the provision qua the

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submission of the written statement within the stipulated extended period of discretionary 90 days, from the date of service of summons on settlement of issues has been well settled to be directory and not mandatory being part of procedural law which is a hand maiden of justice and that extension of time has been permitted to be granted in cases where there would be grave injustice caused if the time was not extended and thus no prejudice can be caused to the respondent herein i.e. the plaintiff of the suit if the petitioner is granted liberty to file the written statement.

The said prayer had been vehemently opposed on behalf of the respondent i.e. the plaintiff submitting to the effect that dilatory tactics are being adopted by the petitioner herein/ i.e. the defendant.

On a consideration of the submissions that have been made in the application under Section 151 CPC that had been filed by the petitioner, it is considered appropriate to grant one single opportunity to the petitioner to file the written statement before the learned Trial Court on the date 23.10.2018, which is stated to have been placed on record subject to payment of costs by the petitioner of Rs.10,000/- to the respondent on the date 23.10.2018.

The petition is disposed of.

ANU MALHOTRA, J

OCTOBER 11, 2018