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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 962/2018 & CM APPL. 33621-33622/2018**
RAGHAV CHOPRA Petitioner
Through Ms. Amrit Kaur, Adv.

versus

SHIVANI JAIN Respondent
Through Mr. Mehul Singh Tomar, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **11.09.2018**

At the outset in reply to the specific Court query, learned counsel for the petitioner has made the payment of costs in terms of the order dated 18.12.2017 of the learned ADJ-03, which had been imposed qua the delay in submissions of the written statement, which has been handed over to the learned counsel for the respondent.

Vide the present petition, the petitioner assails the impugned order dated 28.05.2018 of the Court of the learned ADJ-03, Rohini in as much as the payment of costs of Rs.5,000/- imposed vide order dated 18.12.2017 having not been paid for delay in submission of the written statement of the defendant, the defence of the defendant was struck off and the matter was renotified for plaintiff's evidence for the date 25.07.2018. Vide proceedings dated 25.07.2018 of the learned Trial Court in CS No. 511/17, an application was filed on behalf of the petitioner herein i.e. the defendant

of the said suit seeking the setting aside of the order dated 28.05.2018 , - was dismissed, it having been observed to the effect that the application was too cryptic and without any merits and the witness of the plaintiff i.e. the present respondent who was present was examined, cross examined and discharged and the matter is indicated to be listed for the plaintiff's evidence on 13.09.2018.

Submissions have been made on behalf of either side.

The TCR was requisitioned vide order dated 06.09.2018 but has however not been received.

Learned counsel for the respondent has however put up the internet downloaded copies of the orders dated 26.05.2017, 04.09.2017, 14.03.2018, 28.05.2018 and 25.07.2018.

The suit in the instant case is indicated to have been instituted on 26.05.2017 with the notice i.e. apparently the summons for settlement of issues having been issued to the present petitioner, returnable on 04.09.2017 and on the date 04.09.2017, the counsel for the defendant is indicated to have been present and filed the written statement qua which the plaintiff submitted that the same was filed beyond time. The matter was however nevertheless vide order dated 04.09.2017 of the learned Trial Court listed for filing of replication / framing of issues on 24.10.2017.

It has been submitted on behalf of either side that the copy of the order dated 24.10.2017 is not uploaded on the net but according to the submissions that have been made, the learned Presiding Officer of the Trial Court was on leave on the said date and the proceedings in the matter were thereafter stated to be listed on 18.12.2017 on which date the matter is

indicated to have been transferred to another Court in terms of the order of this Court to the effect:-

“Case received by way of transfer in pursuance of Delhi High Court Order No. 25/DHC/Gazette/G-1/VI.E.2(a)/2017 dated 01.11.2017. It be checked and registered.”

and on the said date in view of the submissions that had been made on behalf of the plaintiff i.e. the respondent that there was no objection if the delay in submissions of the written statement was condoned subject to costs, the same was condoned subject to payment of costs of Rs.5,000/- and the matter having been listed for replication / settlement of issues for 14.03.2018 and on 14.03.2018 none chose to appear for the defendant and the costs imposed on 18.12.2017 were not paid and the matter was however renotified for 28.05.2018 for payment of costs and filing of replication as well as for settlement of issues and on 28.05.2018, the impugned order was passed.

The petitioner is indicated to have filed an application seeking the setting aside of the order dated 28.05.2018 submitting to the effect that the proxy counsel had appeared and he did not inform of the defence having been struck off vide order dated 28.05.2018. It has been submitted through the present petition vide para 3.6 that the counsel for the petitioner learnt about the passing of the order dated 28.05.2018 as he explained to the learned Trial Court that he was not aware of the earlier order and prayed for recalling the earlier order and offered to pay costs of Rs.5,000/- but the same is refuted on behalf of the respondent.

Nevertheless taking into account the factum that the submissions of the delay in the submission of the written statement had in fact been condoned vide order of the learned Trial Court dated 18.12.2017 subject to costs which have not been paid, it is considered appropriate that an opportunity is granted to the petitioner to contest the matter on merit. However, the respondent to the petition has undoubtedly to be compensated with payment of costs in relation thereto and thus the order dated 28.05.2018 is set aside subject to payment of costs of Rs.25,000/- to be paid by the petitioner to the respondent on the date 13.09.2018.

In the event of the said costs not being paid, the learned Trial court shall proceed to record the plaintiff's evidence in the matter. In the event of the costs as directed hereinabove being paid, though the testimony of PW1 examined, cross-examined and discharged already on 25.07.2018, shall continue to be on record and shall be considered at the stage of objections, nevertheless the replication to the said written statement may be submitted by the respondent to the present petition i.e. by the plaintiff and additional issues, if required, may be framed by the learned Trial Court.

With these observations, the petition is disposed of.

Copy of the order be given Dasti under the signatures of the Court Master.

ANU MALHOTRA, J

SEPTEMBER 11, 2018/MK

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