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

+ **CM(M) 1570/2018 & CM APPL. 53303/2018**

ROHIT SINGH

..... Petitioner

Through: Mr. J.P. Singh, Sr. Advocate with Mr.
K.K. Singh & MR. Ghanshyam
Sharma, Advocates.

versus

PARIMAL BAHATTACHARJEE

..... Respondent

Through: Mr. Sanjeev Sahay & Mr. Ankit
Anand, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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18.12.2018

CM APPL.53304/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 1570/2018 & CM APPL. 53303/2018

Learned counsel on behalf of the respondent is present and
accepts notice of the petition.

Submissions have been made on behalf of either side on the
petition vide which the petitioner assails the impugned order dated
05.09.2018 of the learned ADJ-02, Karkardooma, East, Delhi in CS
No.1912/16 whereby an application under Section 114 of the CPC
read with Order XLVII Rule 1 and Order VIII Rule 1 of the CPC read
with Section 151 of the CPC filed by the defendant seeking review of

an order dated 27.11.2017 and seeking condonation of delay of 181 days in filing the written statement and for taking the same on record along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the said written statement was disallowed.

It has been submitted on behalf of the petitioner that the petitioner was served only through publication as indicated vide proceedings dated 31.10.2017 in the English daily Statesman dated 24.08.2017 and in the Hindi daily newspaper Veer Arjun dated 29.08.2017, that the proceedings vide order dated 31.10.2017 had been re-notified for the date 27.11.2017 on which date the defendant i.e. the petitioner herein put in appearance and the vakalatnama was filed on behalf of the petitioner herein, however, the written statement having not been filed till the said date inasmuch as the petitioner was served on 24.08.2017, the right to file the written statement was closed vide order dated 27.11.2017. A submission was made by the defendant i.e. the petitioner herein that the copy of the plaint had not been received by the petitioner herein in relation to which it was submitted by the learned counsel on behalf of the plaintiff i.e. the respondent herein that he had never been approached neither personally nor in Court for supply of copies of the plaint vide order dated 27.11.2017, the copy of the plaint along with the annexures were directed to be supplied to the counsel for the defendant i.e. the present petitioner with the matter having been re-notified for plaintiff's evidence for the date 22.02.2018.

On behalf of the petitioner, has been submitted the copy of the publication in the edition of the Statesman to submit that the proclamation under Order V Rule 20 of the CPC was only in relation to the directions to put in appearance before the Court on the date 31.10.2017 and were not in fact the summons of the suit. Apparently, the petitioner herein was not supplied with the copy of the plaint till the date 27.11.2017 as indicated vide proceedings dated 27.11.2017. Nevertheless, the written statement is stated to have been submitted on 22.02.2018 much beyond the stipulated period of 30 days from the date 27.11.2017. It is however, submitted on behalf of the petitioner that the same was nevertheless filed within the extended discretionary period of 90 days from the date 27.11.2017 and it is thus submitted on behalf of the petitioner that the delay in filing the same be condoned and the impugned order dated 05.09.2018 rejecting the prayer made by the petitioner be set aside.

On behalf of the respondent i.e. the plaintiff to CS No.1912/16, the petition has vehemently been opposed submitting *inter alia* to the effect that there have been a deliberate dilatory tactics adopted by the petitioner herein and that there have been false submissions also been made which are recorded through proceedings dated 05.09.2018. It has also been submitted on behalf of the respondent that the petitioner herein has not been making the payment of rent to the plaintiff i.e. the respondent herein since the year 2014 and that the respondent is a senior citizen and a pensioner and he has no other source of livelihood

other than the premises in suit in which the petitioner herein is a tenant.

Taking into account as already observed the aspect hereinabove that the petitioner was served with the copy of the plaint and the documents annexed thereto only on 27.11.2017, and the factum that the written statement was filed within a period of 90 days from the date 27.11.2017, subject to payment of costs of Rs.60,000/- by the petitioner to the respondent to be paid on 21.12.2018 before the learned Trial Court, the written statement of the petitioner would be allowed to be taken on record.

In the event of the said costs not being paid on the date 21.12.2018, the proceedings be re-notified as directed vide order dated 27.11.2017 for the petitioner's evidence for the date to be fixed by the learned Trial Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J

DECEMBER 18, 2018/NC