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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1373/2017 and CM No. 43750-43751/2017**

ALLIED REALTY PRIVATE LIMITED Petitioner
Through: **Mr.Ravi Gupta, Sr.Advocate with**
Mr.Mehul Parti and Ms.Apoorva
Vijh, Advocates

versus

CHANDER MAL Respondent
Through: **Mr.Nakul Jain, Advocate**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **16.08.2018**

1. Submissions have been made on behalf of either side qua the petition vide which the petitioner assails the impugned order dated 3.8.2017 in CS(OS) No. 8807/16 of the learned Trial Court of the Additional District Judge-05, South-Saket Courts whereby an application under Order VIII Rule 10 of the CPC read with 151 CPC was disposed of observing to the effect that it would not be appropriate to pass any decree/judgment forthwith under Order VIII Rule 10 CPC but the defence of the defendant was struck off in terms of order VIII Rule 10 CPC. The summons for settlement of issues that had been served on 13.2.2015 but no written statement was filed within 30 days from the receipt of the summons and instead on 18.4.2015 an application under Order VII Rule 11 CPC was filed by

the defendant which was dismissed by that Court vide order dated 29.4.2017 after receipt of the case from the High Court of Delhi due to change in pecuniary jurisdiction and the application under Order VIII Rule 10 CPC was moved by the plaintiff on 27.5.2015 and the defendant filed the written statement thereafter on 22.7.2017. It was also observed by the learned Trial Court to the effect that the filing of the application under Order VII Rule 11 CPC does not automatically extend the period prescribed under Order VIII Rule 1 CPC to file the written statement and delay in filing the written statement can be condoned only in exceptional circumstances and that the claim of delay on the basis of *bona fide* belief of law was not an exceptional circumstance and was no excuse and that the grounds for condonation of delay were not sufficient and hence the application filed by the defendant for delay in filing the written statement was thus declined.

2. During the course of submissions that have been made on behalf of either side, it has been brought forth that the application under Order VII Rule 11 CPC filed by the defendant i.e., the present petitioner in the instant case was filed on 18.4.2015 and was dismissed vide order dated 29.4.2017 in Suit No. 8807/16 of the Court of the Additional District Judge-05, and the challenge to the said order was withdrawn as per proceedings dated 14.7.2017 of this Court in C.Rev. P. No. 152/2017.

3. Vide the order dated 14.7.2017, it was observed to the effect that the counsel for the defendant had sought an opportunity to file the written statement stating that the written statement would be filed with an advance copy to the counsel for the plaintiff on or before

31.7.2017 and vide paragraph No. 10 and 11 of the said order it was observed to the effect:

“10. Only for the sake of ensuring that there is no further delay to the suit, in the absence of the respondent/plaintiff it is deemed appropriate to dispose of this request by providing that subject to the petitioner/defendant filing the written statement on or before 21st July, 2017 as aforesaid and further subject to the petitioner/defendant tendering to the counsel for the respondent/plaintiff costs of Rs.1,00,000/-, the written statement shall be conditionally taken on record. If the respondent/plaintiff is agreeable to the written statement being taken on record subject to the said costs, the counsel for the respondent/defendant will be entitled to accept the costs and in which case the respondent/defendant may file replication to the written statement on 3rd August, 2017 or thereafter.

11. However if the said arrangement is not agreeable to the counsel for the respondent/plaintiff, the respondent/plaintiff shall be entitled to apply in this disposed of Revision Petition for hearing on the said aspect.”

4. Vide order dated 1.8.2017 of this Court in C.R.P No. 152/2017 vide which the plaintiff of the suit sought the review of the order dated 14.7.2017 on the grounds of concealment made by the defendant to the said suit, the review petition was allowed and paragraphs No. 6 to 12 of the order dated 14.7.2017 in C.R.P. No. 152/2017 of this Court were directed to be treated as expunged from the order vide paragraph 18 of the order dated 1.8.2017. It was however observed to the effect that it was needless to state that the

Additional District Judge would proceed with the application under Order VIII Rule 10 CPC in accordance with law and without being swayed by the order of this Court dated 14th July, 2017 having given option for written statement to be taken on record and the said part having been expunged vide Order dated 1.8.2017.

5. On behalf of the plaintiff to the present petition, reliance is *inter alia* placed on the verdict of the Supreme Court in ***R.K.Roja v. Rayudu & Anr.*** (2016) 14 SCC 275 in support of the contention that in view of the pendency of the application under Order VII Rule 11 CPC which had essentially to be disposed of, the Court could not have proceeded with the trial and the order not taking into account the written statement of the respondent in that case was set aside.

6. It has been submitted on behalf of the petitioner that the petitioner having now been served on 3.2.2015 and the application under Order VII Rule 11 CPC having been declined on 29.4.2017 with the same merging into order dated 14.7.2017, the written statement filed on 22.7.2017 was nevertheless within the period of 90 days i.e., the extended period of discretionary time that could be granted by the Court for submission of the written statement and that the non-filing of the same within the stipulated period of 30 days was only due to filing of an application under Order VIII Rule 10 CPC on 18.4.2015 and reliance was also placed on behalf of the petitioner on the order of this Court, dated 1.7.2015 in CS(OS) No. 3713/2014 (the number that the suit bore before this Court before the District Court) thereby it had been directed to the effect that till the appropriate orders were passed in I.A. No. 9589/2015 which was the application

under Order VII Rule 11 CPC, orders on the application under Order 8 Rule 10 CPC, i.e., application then bearing I.A. No. 12852/15 were deferred.

7. Consequently, vide order dated 24.8.2015 of the Hon'ble Division Bench of this Court against this very order dated 1.7.2015 of this Court it was directed to the effect:

“The Learned Single Judge has also deferred orders on IA No. 9589/2015 which was an application filed on behalf of the defendants, inter alia, seeking extension of time to file the written statement. It is clear from the above order that the learned Single Judge has not considered the question of extension of time for filing the written statement as yet. It will be open to the learned Single Judge to take a decision in the matter when it comes up before the learned Single Judge. We have not expressed any view on the merits of the matter. It is for the learned Single Judge to take a call on the Order VIII Rule 10 application as also on the application filed by the defendants/respondent herein, being IA No. 9589/2015 which is under Order VII Rule 11 CPC.”,

vide which it was thus *inter alia* observed to the effect that as the said order dated 1.7.2015, the learned Single Judge had not considered the question of extension of time to file the written statement when it came up for hearing before the Court.

8. Vide order dated 9.10.2015 of the Supreme Court in SLP No. 27103/2015 which had been filed by the plaintiff of the said suit i.e. the respondent to the present petition, assailing the order of the Hon'ble Division Bench of this Court dated 24.8.2015 in FAO (OS)

445/2015, this Court was called upon to deal with the application under Order VIII Rule 10 CPC of the plaintiff as well as the application under Order VII Rule 11 CPC filed by the defendant in quite promptitude.

9. On a consideration of the submissions that have been made on behalf of either side as observed herein above, the written statement having been filed within the discretionarily extendible period of 90 days from the date of service on the defendant, i.e., the petitioner herein, that may be granted, coupled with the factum of the pendency of the application under Order VII Rule 11 CPC filed by the defendant since 18.4.2015 and also taking into account the observations in the order dated 24.8.2015 of the Supreme Court in relation to the aspect that the filing of the application under Order VII Rule 11 CPC does not automatically extend the period prescribed under Order VIII Rule 10 CPC filed by the defendant and also the repeated applications pending filed by either side and the pendency of litigation, subject to payment of costs of Rs.1,50,000/- by the petitioner to the respondent to the present petition on 20.8.2018, the written statement of the petitioner is allowed to be taken on record.

The petition is thus disposed of.

ANU MALHOTRA, J

AUGUST 16, 2018/SV