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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd November, 2019
+ **CM(M) 1662/2019**
HARWANT SINGH Petitioner
Through: Mr. Praveen Kumar, Advocate (M-
9999099325)
versus

GOVIND SINGH Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

CM APPL. 50411/2019(for exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM(M) 1662/2019 & CM APPL. 50410/2019

2. A strange turn of events has taken place in the present case wherein initially the written statement was taken on record with costs and thereafter despite costs being tendered, the same has been taken off the record – again with increased costs.

3. The written statement of Defendant No.1, the Petitioner herein (*hereinafter, 'Defendant No. 1'*) was originally taken on record on 29th April, 2019, subject to payment of Rs. 5000/- as costs. The order dated 29th April, 2019 reads as under:

"1. In the meantime, on 30/08/2018 defendant no.1 filed application for condonation of delay in filing of written statement and another application to seek recall of order dated 06/08/2018 vide which the opportunity of defendant no.1 to file written statement was closed.

2. In the application, defendant no.1 has mentioned that its main counsel Sh. Praveen Kumar was not well throughout the month of July, 2018, because of which he could not prepare and file the written statement in time. Ld. Counsel for defendant no.1 has filed the photocopies of his medical documents in support of the application.

3. Ld. Counsel for plaintiff has filed reply to the applications. Be taken on record. Copy supplied.

4. Considering the reasons assigned by defendant no.1 for delaying filing of written statement, the order dated 06/08/2018, vide which opportunity of defendant no.1 to file written statement was closed, is recalled. The delay in filing of written statement by defendant no.1 is hereby condoned with consent of Ld. Counsel for plaintiff, with cost of Rs.5,000/- upon defendant no.1.

5. Subject to prior payment of cost, written statement filed by defendant no.1 be taken on record. Copy of written statement be supplied to Ld. Counsel for plaintiff against acknowledgment.

Put up for cost and completing of pleadings on 23/08/2019.”

4. Ld. counsel for Defendant No. 1 submits that Defendant No. 1 had in fact prepared a demand draft for Rs. 5,000/- and tendered the same before Court, however, the Plaintiff's counsel refused to accept it, as it was in the name of the Plaintiff and a WhatsApp message was sent asking for the demand draft to be made in favour of the Plaintiff's counsel. Print out of the screen shot of the said message has been shown to the court. On 16th October, 2019, when the item was listed as Item no.2, and before the counsel for Defendant No. 2 reached the court, it was argued that the costs had not been paid and accordingly the written statement has been taken off the record with further costs of Rs.10,000/-. The said order is impugned and

reads as under:

“D1 has failed to pay the pending cost since 29/04/2019, because of which the written statement is not taken on record. Because of the dilatory conduct of D-1, the trial of the suit could not commence for several dates. The written statement filed by D-1 is taken off the record with further cost of Rs. 10,000/- upon D-1.

Since there is no defence to the suit, the requirement of framing of issues is obviated.

Put up for PE on 02/12/2019.”

5. While there is no doubt that initially Defendant's right to file written statement was closed on 6th August, 2018, thereafter on 29th April, 2019, the written statement was taken on record subject to payment of costs. The order dated 29th April, 2019 did not specify as to in whose favour the costs were to be paid. Thus, preparation of a demand draft of Rs.5,000/- in favour of the Plaintiff was reasonable conduct on behalf of Defendant No.1. Considering the costs had in fact been tendered to the ld. counsel for the Plaintiff in the name of the Plaintiff, costs ought to have been accepted and all the subsequent events could have been completely avoided. Whenever orders are passed imposing costs on parties, unless there is any specific person in whose favour the costs are directed to be paid, it is understood that costs are to be in the name of the party in whose favour the costs are being awarded. Thus, the non-acceptance of the demand draft of Rs.5,000/- is unjustified on and no further costs could have been imposed, and the written statement could not have been taken off the record. The impugned order is set aside. The written statement is taken on record subject to payment of costs of Rs.5,000/- to be paid in favour of the Plaintiff.

6. With the above observations, petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 22, 2019

Rahul

