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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 238/2019 & CM APPL. 6507-6509/2019
M/S TIGER 4 SECURITY & DETECTIVE PVT LTD..... Petitioner
Through Counsel for the petitioner (appearance
not given)

versus

VIRENDER KUMAR TANWAR Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **12.02.2019**

CM APPL. 6508/2019

Exemption allowed subject to all just exceptions.

Application is disposed of.

CM APPL. 6509/2019

This CM APPL. 6509/2019 has been filed on behalf of the petitioner seeking condonation of 3 days in re-filing the petition after removal of the objection. For the reasons explained in the application, the condonation of 3 days delay in re-filing the petition is condoned.

The application is disposed of.

CM(M) 238/2019 & CM APPL. 6507/2019

Submissions have been made on behalf of the petitioner by counsel for the petitioner assailing the impugned order dated 06.12.2018 of the

CM(M) 238/2019

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learned ADJ-04, PHC, New Delhi in CS No. 59206/16 vide which the prayer made by the plaintiff of the suit, arrayed as the respondent to the present petition, under Order 8 Rule 1 r/w Section 151 of the CPC seeking that the written statement that had been sought to be filed by the defendant be not taken on record, was allowed and the application that had been filed on behalf of the defendant under Order 8 Rule 1 r/w Section 151 of the CPC seeking to place on record the written statement was declined.

It has been submitted on behalf of the petitioner by learned counsel for the petitioner that there are observations in para-3 of the impugned order, which read to the effect : -

“3. I have considered the submissions and perused the record. It is observed that defendant has not supported the contents of his aforesaid application by filing any document. The documents showing renovation work, non-availability of AR due to his visit to his native place could have been annexed with the application to support the contents of application. Ld. Counsel for the defendant could have shown the document showing that he was contesting elections of the Bar Association at Karkardooma Courts but, no document is annexed with the application. The grounds taken in the application by the defendant are general in nature. The day-to-day delay has not been explained. The delay is of more than 200 days.”

and that the supporting documents in relation to the aspect that there was renovation work, non-availability of AR of the petitioner due to his visit to his native place and that the learned counsel for the defendant i.e. the petitioner herein was contesting election of the Bar Association at

Karkardooma Courts, have now been submitted in the present petition and thus the delay of 210 days in submission of the written statement has been explained.

A bare persual of the impugned order indicates that the summons of the settlement of issues were served on the defendant i.e. the petitioner herein on 08.09.2016 and the defendant i.e. the petitioner herein appeared through counsel in the Court on 21.12.2016 and the counsel for the defendant filed the vakalatnama and prayed for filing the written statement and the case was adjourned for 15.02.2017 on which date the learned Presiding Officer was on leave, however, the defendant had not filed the written statement on that day and the case was adjourned for 05.04.2017 and on 05.04.2017 learned Counsel for the defendant submitted the written statement on behalf of the defendant after expiry of 210 days from the date of service of notice to the defendant without moving any application seeking condonation of delay in filing the written statement.

On behalf of the defendant i.e. the petitioner herein it was sought to be submitted that the defendant had received notice of appearance on 11.11.2016 and the AR of defendant could not reach to the Court on 11.11.2016 when the case was called and when he reached to the court, the case was already adjourned for 21.12.2016.

As already observed hereinabove, the service of the summons of the settlement of issues as reflected vide the impugned order was effected on 08.09.2016 and on 11.11.2016, the defendant was indicated to have appointed a counsel, who had filed his vakalatnama on behalf of the

defendant on 21.12.2016 but the written statement was not filed on that day despite the expiry of the extended discretionary period of 90 days that may be granted in the facts and circumstances of a case if it is considered appropriate by the Court to exercise the discretion of extension of period of time in submission of the written statement and despite service on 08.09.2016 and even the vakalatnama for the counsel for the defendant is indicated to have been filed only on 21.12.2016 on which date the written statement was indicated to have not been filed with it having been submitted that as the copy of the suit was misplaced due to the work of renovation going on in the office of the defendant and the matter was adjourned for 15.02.2017 and on which date the written statement had not been signed by the AR of the defendant as he had gone to his native place for some urgent work whereafter the learned counsel for the defendant is stated to have been contesting the election of the Bar Association in the Karkardooma Courts due to which also the written statement could not be filed with the stipulated period.

Apparently, there is complete laxity on behalf of the petitioner i.e. the defendant in the submission of the written statement despite due service of the summons of the settlement of issues on 08.09.2016 as reflected vide the impugned order. In the facts and circumstances, it is not considered appropriate to exercise any discretion to grant the submission of the written statement in the matter and in the circumstances, it is held that there is no

infirmity whatsoever in the impugned order.

The petitioner and the accompanying application are declined.

ANU MALHOTRA, J

FEBRUARY 12, 2019/MK