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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 255/2019 & CM APPL. 7082/2019
M/S SPECTRUM ACADEMY PVT LTD Petitioner
Through: Mr. Mukesh Kr.Sinha, Advocate.

versus

M/S NIDHI BANSAL Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **15.02.2019**

CM APPL. 7083/2019 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 255/2019 & CM APPL. 7082/2019

Vide the present petition, the petitioner assails the impugned orders dated 25.07.2017 and 08.01.2019 of the learned Trial Court of the ADJ-03, Patiala House Courts, New Delhi in CS No. 715/17 inasmuch as vide order dated 25.07.2017, the right to file the written statement of the petitioner herein i.e. the defendant no.1 to the said suit was closed inasmuch as the defendant no.1 was served on 12.06.2017 by registered post and no written statement was filed nor any application seeking condonation of delay was moved. The proceedings dated 25.07.2017 reflect the presence of the learned counsel for the defendant no.1 i.e. petitioner of the present petition.

The next impugned order dated 08.01.2019 of the learned Trial Court indicates that an application that was filed by the defendant no.1 i.e. the present petitioner seeking the setting aside of the impugned order dated 25.07.2017 vide which the right to file the written statement was closed, was declined, it having been observed to the effect:-

“Arguments heard.

It is mentioned in the application that defendant no.1 company was misled by the ill advise of the erstwhile counsel that since defendant no.1 is no more in possession of the premises, hence there is no need for them to file WS, hence they did not file WS. Hence, it is requested that the present application may be allowed. Further, it is mentioned in the application that thereafter earlier counsel even stopped appearing. Hence, it is submitted that defendant no.1 approached a new counsel, he was advised properly and hence the present application is moved.

Heard the Ld. Counsel for applicant and gone through the record.

Needless to say right to file WS was closed on 25.07.2017 thereafter issues were framed and various dates were given for leading evidence.

Today plaintiff’s evidence stands closed.

It is not the case of defendant no.1 that he was not being represent all through the last 1 ½ years, he was due represented by Ld. counsel. Right to file WS cannot be granted only on the ground that he was misadvised by the counsel while there was nothing on record to show the same. If such applications are allowed only on the ground that they were ill advised by the erstwhile counsel, there would be no end to the delay of the proceedings. The present application is moved after 1 ½ years deserves to be dismissed. Hence, the application is dismissed.”

It has been submitted on behalf of the petitioner herein i.e. the defendant no.1 of the said suit that the suit that had been filed by the plaintiff i.e. respondent herein was one for possession and recovery of rent and that the petitioner herein had already handed over the possession of the suit premises vide letter dated 28.04.2017 and that possession of the property had already been parted to a third person which was within the knowledge of the respondent to the present petition i.e. the plaintiff of the said suit and that the defendant no.1 i.e. the petitioner herein company was misled by the ill advise of the erstwhile counsel that since the defendant no.1 i.e. the petitioner herein was no more in possession of the premises, there was no need to file the written statement and thus, the written statement was not filed and it was thus submitted that the written statement be allowed to be taken on record and that the earlier counsel had stopped appearing and when the new counsel was contacted by the petitioner i.e. the defendant no.1 of the said suit, he was advised properly and thus, the application was moved seeking setting aside of the order dated 25.07.2017 vide which the right to file the written statement was closed.

The impugned order dated 08.01.2019 reflects that after the right to file the written statement was closed, issues were framed and various dates were given for leading evidence and the plaintiff's evidence was closed on 08.01.2019. The other impugned order dated 25.07.2017 is in consonance with the said observations in the order dated 08.01.2019 of the learned Trial Court which indicates the issues

that were framed on 25.07.2017 with the matter having been re-notified vide order dated 25.07.2017 for reply and arguments on an application under Order I Rule 10 of the CPC filed by the defendant no.2, qua which it is submitted on behalf of the petitioner herein by the learned counsel for the petitioner that, that was not an application filed by the defendant no.2 but it was filed by a third party, which application has already been dismissed.

It is needless to observe that as reflected vide the impugned order dated 08.01.2019 that the petitioner herein had been duly represented by a new counsel and there is no infirmity in the impugned order dated 08.01.2019 nor in the impugned order dated 25.07.2017 vide which the right to file the written statement i.e. the petitioner herein was closed and nor is there any infirmity in refusal to call the order dated 25.07.2017 qua the prayer made by the petitioner herein seeking time to file the written statement afresh on the submission that he had been misadvised by the counsel in not filing the same.

Reliance is *inter alia* placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in "***Rafiq and Ors. vs. Munshilal and Ors.***" in Civil Appeal No.1415 of 1981 decided on 16.04.1981 with specific reliance on the observations in the said verdict to the effect:-

"What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr.A.K. Sanghi invited

us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter.”

It is essential to observe that the facts of the present case and those of the case relied upon on behalf of the petitioner are not in *pari materia*. It is not brought forth through the proceedings on the record that the petitioner herein was not duly represented as in the case *“Rafiq and Ors. vs. Munshilal and Ors.”* (supra).

In the circumstances, there is no merit in the prayer. The petition and the accompanying application CM APPL. 7082/2019 are declined.

ANU MALHOTRA, J

FEBRUARY 15, 2019/NC