

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 350/2018 and CM No. 11983/2018**

MITHLESH

..... Petitioner

Through: Mr.Vikas Yadav, Advocate

versus

S S MAAN & ANR

..... Respondents

Through: Mr.Nalin Tripathi and Ms.Chanchal
Sharma, Advocates

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

14.02.2019

Vide the present petition, the petitioner assails the impugned order dated 4.7.2017 of the Court of the learned Additional District Judge, vide which an application under Section 151 filed by the petitioner arrayed as the plaintiff to the CS No. 17250/16 seeking recalling of the order dated 8.11.2016 vide which the right to file the reply by the petitioner herein as the defendant to the counter claim filed by the respondent as the defendant to the said CS No.17250/16 was declined in as much as it was not filed within the stipulated period of time granted vide order dated 6.9.2016 when time had been sought on behalf of the petitioner herein to submit the reply to the counter claim submitting to the effect that the counsel was not present due to the ailment of his mother. It has been submitted on behalf of the petitioner that the response to the counter claim was not filed in as much as the counter claim was not filed by the defendant of the said

suit within the stipulated period of thirty days granted vide order dated 4.11.2015 of this Court in ARB P. No. 349/2014 as the suit bore the number before the transfer of the matter to the District Courts on change of pecuniary jurisdictions.

The said aspect cannot be accepted as observed vide the proceedings in the impugned order itself which reflects that the counter claim was filed on 5.12.2015, with it having been observed by the learned Trial Court that the said counter claim was filed within the period of 30 days as directed vide the order dated 4.11.2015. Learned counsel for the petitioner further submits that the said counter claim was filed beyond the period of 30 days in as much as the period of 30 days expired on 3.12.2015.

Be that as it may, the petitioner was served with the advance copy of the counter claim on 6.12.2015. It has however been submitted on behalf of the petitioner that vide order dated 10.12.2015 of this Court in CS(OS) 2926/2012 before the transfer of the matter to the District Court only notice of the application IA No. 25278/15 had been issued to the petitioner herein and there is no notice of the counter claim issued.

Apparently, as observed by the learned Trial Court vide the impugned order it is amply clear that the petitioner herein was aware of the submission of the counter claim and grant of opportunity for filing the same even if it has been filed with a delay of two days in terms of order dated 4.11.2015. It has further been submitted on behalf of the respondent that there is no opposition to the submission of the written statement by the petitioner herein to the counter claim

filed by the respondent thereof and that the matter be disposed of on merits and not on technicalities, subject to imposition of costs.

Even otherwise, in the interest of justice, it is considered appropriate that an opportunity is granted to the petitioner to file the written statement to the counter claim of the respondent which is further allowed to be taken on record subject to payment of costs of Rs.15,000/- by the petitioner to the respondent before the learned Trial Court on the date as fixed by the learned Trial Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J

FEBRUARY 14, 2019/SV