

\$~18

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 447/2018 & CM APPL. 14959/2018**

RAMESH CHANDRA KAPUR Petitioner
Through: Mr. Nitesh Anan, Advocate.

versus

APEX HEART CARE PVT LTD Respondent
Through: Mr. Ajay Kohli, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **07.01.2019**

Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 09.08.2017 of the learned Civil Judge-03, Central in Civil Suit no.2975/16 vide which the defence of the petitioner herein as defendant to the said suit was struck off inasmuch as the written statement sought to be filed by the defendant i.e. the petitioner herein was not filed within the stipulated period of 30 days from the date of service nor within the discretionary extended period of 90 days from the date of service.

On behalf of the petitioner, it has been submitted that initially the petitioner had been proceeded *ex parte* but being a layman who is suffering from several diseases, so contended before the learned Trial Court to the effect that he had not been able to engage a counsel in due time and the *ex parte* proceedings were set aside vide order dated

25.05.2017 subject to payment of cost of Rs.1,000/- on which date i.e. 25.05.2017 it had also been submitted that documents annexed to the plaint were not supplied which the learned counsel for the plaintiff i.e. the respondent to the present petition undertook to supply the same during the course of the day and the written statement vide order dated 25.05.2017 was thus directed to be filed within a period of 30 days from the date 25.05.2017 with the matter having been re-notified for the replication and framing of issues on 09.08.2017 and it has been submitted on behalf of the petitioner that the written statement was thus sought to be filed on 09.08.2017 with it having also been submitted on behalf of the petitioner that the copies of documents were supplied on behalf of the plaintiff i.e. the respondent to the present petition on 25.05.2017 as undertaken on 25.05.2017 without any demur to the effect that to the summons for settlement of issues no documents were annexed to the plaint.

It has thus been submitted on behalf of the petitioner that there has been no deliberate delay in submission of the written statement and that an advance copy of the written statement had also been supplied to the learned counsel for the plaintiff on 20.07.2017.

On behalf of the respondent, the prayer is vehemently opposed submitting to the effect that the petitioner had already been granted an opportunity for submission of the written statement vide order dated 25.05.2017 when initially the petitioner had even been proceeded *ex parte* vide order dated 28.01.2017 and that deliberate dilatory tactics are being adopted inasmuch as the defendant i.e. the petitioner herein had been served on 20.11.2016 but chose not to put in appearance on

the date 28.01.2017.

On a consideration of the aspect that vide proceedings dated 25.05.2017, it has been observed to the effect that the copies of documents annexed to the plaint were submitted to have not been supplied to the defendant which were then undertaken to be supplied during the course of the day on 25.05.2017 with the matter having been re-notified for 09.08.2017 with a period of 30 days of time having been granted vide order dated 25.05.2017 to submit the written statement, in the interest of justice, it is considered appropriate to set aside the impugned order dated 09.08.2017 in CS 2975/16 subject to payment of costs of Rs.5,000/- by the petitioner to the respondent and subject to payment of the same the written statement of the petitioner is allowed to be taken on record before the learned Trial Court on the date fixed.

The petition is disposed of accordingly.

ANU MALHOTRA, J

JANUARY 07, 2019/NC