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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1237/2018 & CM APPL. 42344/2018
KSHITIJ RANJAN Petitioner
Through Mr. Naveen Kumar Raheja, Adv.

versus

PREM CHAND PRASAD Respondent
Through Mr. Pradeep Kr. Shukla, Adv. present
on advance notice.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **30.01.2019**

Vide the present petition, the petitioner assails the impugned order dated 27.08.2018 of the learned Trial Court of the Civil Judge (SW), Dwarka Courts, New Delhi in CS SCJ 599/18 vide which an application under Order 8 Rule 1 of the CPC filed on behalf of the petitioner herein arrayed as the defendant to the said suit seeking time to file the written statement was declined observing to the effect that the defendant having been served on 30.05.2018, no explanation has been disclosed by the applicant i.e. the petitioner herein for extending the period for filing the written statement.

It has been submitted on behalf of the petitioner that an application under Order IX Rule 7 of the CPC that had been filed by the petitioner herein was allowed vide the very same order dated 27.08.2018 vide which

the application under Order 8 Rule 1 of the CPC was declined and that the reasons in both the applications are identical in as much as the petitioner could not put in appearance on 04.08.2018 before the learned Trial Court in as much as he had to leave to his home town to perform the rituals of his grand father in view of his demise and that the defendant i.e. the petitioner herein returned to Delhi on 16.08.2018.

It has been submitted on behalf of the respondent by the learned counsel for the respondent i.e. the plaintiff of the said suit that the absence of the defendant to the said suit on 04.08.2018 having been explained, the plaintiff had not opposed the application seeking the setting aside of the ex-parte proceedings subjects to costs which had been so imposed.

It has further been submitted on behalf of the respondent to the present petition that in view of there being no explanation having been put forth by the petitioner for the non submission of the written statement for the period of service i.e. 30.05.2018 till the date 03.08.2018 or even till the date 16.08.2018, the prayer made by the petitioner herein ought not be granted as a matter of routine even if the stipulated period of 90 days from the date of the service i.e. 30.05.2018 had not elapsed on the date 27.08.2018.

During the course of the submissions that have been made on behalf of the petitioner, it has been submitted that the reasons for the non-submission of the written statement with the stipulated period of time were similar in as much as the grand father of the petitioner was unwell and it is submitted that the documents in relation thereto can be produced.

It has been submitted on behalf of the defendant i.e. the petitioner

herein that the grand father of the defendant had also to be treated at Delhi. It has *inter alia* been submitted on behalf of the petitioner that the suit in question out of which the impugned order arises is a counter blast to the proceedings under Section 138 of the NI Act, 1988 filed by the petitioner herein against the respondent to the present petition.

On a consideration of the submissions that have been made on behalf of either side, it is considered appropriate in the interest of justice to give one single opportunity to the defendant i.e. the petitioner herein to place on record the written statement on the date 01.02.2019 before the learned Trial Court subject to the payment of costs of Rs.30,000/-.

The petition and the accompanying application are disposed of accordingly.

The learned Trial Court shall proceed further in accordance with law.

Copy of the order be given *Dasti* under the signatures of the Court Master.

ANU MALHOTRA, J

JANUARY 30, 2019/MK