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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1569/2018 & CM APPL. 53270/2018
MD RAFEEQ , PROP Petitioner
Through: Mr. Ajit Singh, Adv.

versus

M/S IDARA IMPEX Respondent
Through: Mr. Rakesh Mukhija, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **15.02.2019**

Vide the present petition, the petitioner assails the impugned order dated 06.09.2017 of the learned trial Court of the ASCJ (Central) in CS No.2280/17 vide which the right to file the written statement of the defendant i.e. the petitioner herein was closed in as much as the said written statement had not been filed within the stipulated period of time.

The proceedings on record of the learned trial Court indicate that vide order dated 05.09.2018 it is indicated that the defendant i.e. the petitioner herein was served with the summons for settlement of issues on 19.05.2017 and that the written statement was filed on 05.07.2017 beyond the period of 30 days provided for filing the same and that no application seeking condonation of delay in filing the same within 30 days had been filed and that the closure of the right to file the written statement vide order dated 06.09.2017 called for no recalling or review thereof.

It has been submitted on behalf of either side that the said written statement having apparently been filed on 05.07.2017, the observations in the impugned order dated 06.09.2017 to the effect that the written statement had not been filed was incorrect though that the written statement had not been filed within the stipulated period of 30 days had rightly been observed thereby. It has been submitted by the learned counsel for the petitioner that because the learned counsel for the petitioner himself was out of town, the written statement could not be filed. On behalf of the respondent it has been submitted that the delay in submission of the written statement may be condoned subject to imposition of costs.

As the litigants ought not to suffer for the lapse of their counsel, in the interest of justice, the impugned order dated 06.09.2017 to the extent that it closes the right of the defendant i.e. the petitioner herein to file the written statement is set aside with the written statement already on the record of the learned trial Court being directed to be taken on record as being the written statement of the petitioner herein subject to payment of costs of Rs.10,000/- by the petitioner to the respondent. The learned trial Court shall proceed further in accordance with law.

Copy of this order be sent to the learned trial Court.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

FEBRUARY 15, 2019/vm