

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 1497/2018**

PARDEEP

..... Petitioner

Through: Mr.R.K.Bali, Advocate

versus

MOHIT SHARMA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **22.01.2019**

CM No. 51302/2018

Exemption allowed, subject to just exceptions.

CM(M) 1497/2018

The petitioner assails the impugned order dated 16.8.2018 of the learned SCJ-cum-RC South West, Dwarka Courts, New Delhi in CS No. 744/17 vide which the defence of the defendant was struck off with the written statement of the defendant having not been filed despite opportunities granted to the defendant i.e. the petitioner herein, repeatedly.

It has been submitted on behalf of the petitioner that the same could not be filed on 16.8.2018 when the matter was taken up by the learned Trial Court due to the reasons detailed in the application under Order VIII Rule 1 of the CPC which application was filed on behalf of the defendant i.e., the petitioner herein. The contents of the said application read to the effect:

“ 2. That the counsel of the applicant/defendant was busy in other cases in the morning hours and was held up in a cross examination and therefore could not appear before this Hon'ble court, however, the defendant had appeared in the matter and had sought Passover of the matter for 12:30 PM but counsel of the applicant/defendant even could not get free

at 12:30 PM as he was busy in some other case.

3. That at 12:30 PM, the applicant/defendant had again appeared in the matter and apprized the aforesaid facts to the Hon'ble court that his counsel is busy In some other matter before some other court and will be reaching within half an hour.

4. That no further Passover for half an hour was granted to applicant/defendant and his defence was struck off by the Hon'ble Court and the Hon'ble court was also pleased to grant ad interim ex parte stay to the plaintiff in absence of the counsel of the applicant/ defendant and also without hearing the arguments on the said application.

5. That the written statement of the applicant/ defendant was readily available with his counsel but could not be filed on record due to the busyness of his counsel as mentioned herein above, however the Written Statement is being filed along with the present application.

6. That in case the present application of the applicant/defendant is not allowed, the applicant/defendant shall suffer with irreparable loss which cannot be compensated in monetary terms or otherwise.

7. That the delay in filing the Written Statement and reply to application U/o 39 Rule 1 &2 CPC has happened due to the aforesaid reasons only and there was no deliberation for the same on the part of the applicant/defendant.”

It is essential to observe that the proceeding sheet dated 12.4.2018 of the learned Trial Court indicate that one more opportunity was granted to the defendant for filing a written statement within 15 days from the date 12.4.2018 with the directions to supply an advance copy of the same to the opposite side one week prior to the next date of hearing. The next date of hearing as per the order dated 12.4.2018 is indicated to have been 5.7.2018

on which date also no written statement was filed on behalf of the defendant and it was informed that due to certain difficulty in the family the learned counsel of the defendant could not file the written statement in time and one more opportunity was granted by the learned trial Court to the defendant, i.e., the petitioner herein, to file the written statement within 15 days with direction to supply advance copy of the same at least 7 days prior to the next date of hearing which next date of hearing is the date 16.8.2018 when the defence of the defendant, i.e., the petitioner herein, was struck off, with it having been observed that despite having been granted a number of opportunities, the defendant had miserably failed to file the written statement. The averments made in the application under Order VIII Rule 1 of the CPC already depicted herein above categorically indicate that there was no attempt whatsoever for compliance of the directions dated 5.7.2018 of the learned Trial Court by the defendant, i.e., the petitioner and what is sought to be submitted in the said application is also that on the date 16.8.2018 the written statement could not be filed because the counsel could not appear in time. Apparently, as has been already observed herein above the written statement was not filed within the period of 15 days granted vide order dated 5.7.2018 nor at least seven days prior to the next date of hearing i.e. 16.8.2018 nor within the time granted vide order dated 12.4.2018 and apparently the proceedings dated 12.4.2018 also indicate that the written statement had not been filed within the stipulated period of time. There is no merit whatsoever in the petition. The petition is thus declined.

ANU MALHOTRA, J

JANUARY 22, 2019/sv