

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 67/2019 & CM APPL. 1859/2019**
PURANANAND GAUR & ANR. Petitioners
Through: Mr. Siddharth, Advocate.
(M:9599138139)
versus
NARENDER KUMAR GUPTA Respondent
Through: Mr. K. K. Singh and Mr. R. K.
Poddar, Advocates. (M:9718385000)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **18.02.2020**

1. The present petition challenges the impugned order dated 27th September, 2018 by which recall of the order dated 7th August, 2018 was sought. The Respondent herein/Plaintiff – Mr. Narender Kumar Gupta (*hereinafter* ‘Plaintiff’) filed a suit for recovery of Rs.40 lakhs along with *mesne* profits against the Petitioners herein/Defendants - Shri Purnanand Gaur and Smt. Savita Devi (*hereinafter* ‘Defendants’). In the said suit, summons were issued by the Trial Court on 19th March, 2018 with a returnable date of 10th April, 2018. Copy of the summons has been placed on record by the Defendants, which shows that the Defendants were served sometime in March, 2018. Until 7th August, 2018 the written statement was not filed and the Trial Court struck off the defence of the Defendants. An application was moved seeking recall of the said order, which was dismissed by the Trial Court on 27th September, 2018. The order of the Trial Court reads as under:

*“Matter is at the stage of PE.
At this stage, one application under Section 151 CPC*

filed by Ld. Counsel for defendant seeking recall of order dated 07.08.2018 whereby defence of defendants have already struck off.

In the application, it is stated that the WS could not be filed on 07.08.2018 as the counsel was engaged on the said date and could not prepare the WS on the same date. It is further stated that even the defendant was suffering from some throat infection and could not contact his counsel earlier than 07.08.2018.

It is submitted by Ld. Counsel for plaintiff that he does not want to file any reply to the said application. He has vehemently opposed the application.

Heard Ld. Counsels for the parties and perused the complete record file.

In the application, it is merely stated that the WS could not be filed on 07.08.2018 as the counsel was engaged on the said date. Between 07.08.2018 till date, defendants or their newly engaged counsel did not take any steps. This application has been filed seeking recall of the order dated. 07.08.2018 today. It is not accompanied with any application seeking condonation of delay. Further, the application has not been filed under the specific provision as per CPC. The application is also not accompanied with any medical document of the defendant as pleaded in the application. The application being devoid of any merit is dismissed.

Put up for RE on 23.10.2018.”

2. Ld. counsel for the Defendants submits that since there was change of counsel, the written statement could not be filed and he, thus, prays for one opportunity to file the written statement or to lead evidence in the matter.
3. On the other hand, ld. counsel for the Plaintiff submits that no indulgence deserves to be shown, inasmuch as in the criminal proceedings, the Defendants have admitted the receipt of the amount and the liability. There is no defence and hence no indulgence deserves to be shown.

4. A perusal of the petition shows that it is lacking in basic material particulars. The petition is shorn of detail as to when the Defendants were served with the summons, even the order dated 7th August, 2018 has not been placed on record. Till date, no attempts were even made to file the written statement. The evidence in the matter has already concluded and the matter is now listed for final arguments before the Trial Court. At this stage, allowing the written statement to be filed, would be completely contrary to the provisions of CPC. Further, the conduct of the Defendants does not entitle the Defendants to such indulgence. The Defendants' counsel was also present at the time when the Plaintiff's witness had deposed and given evidence. However, the Defendants did not choose to cross-examine the Plaintiff's witness.

5. Under these circumstances, the present petition is dismissed. However, if the Defendants wish to address arguments at the final stage, they are permitted to do so.

PRATHIBA M. SINGH, J

FEBRUARY 18, 2020/dk