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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CM(M) 119/2020 and CM APPLs. 3967-68/2020**

RAJ KUMAR

..... Petitioner

Through: Mr. Dhruva Bhagat, Advocate (M:  
9910599996).

versus

NEM CHAND & ORS

..... Respondents

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**31.01.2020**

1. An advance copy of this petition has been served on the Id. counsel for the Respondents by e-mail dated 29<sup>th</sup> January, 2020, which has been taken on record. However, none appears for the Respondents.
2. This petition challenges the order dated 12<sup>th</sup> December, 2019, by which the right to file a written statement has been closed in respect of Defendant Nos. 3 to 6. The Petitioner herein is Defendant No. 5 in the suit for possession, declaration and injunction, filed by Respondent No.1/Plaintiff - Shri Nem Chand (*hereinafter*, "*Plaintiff*"). There are various other Defendants i.e., Defendants Nos. 1, 2, 3, 4 and 6.
3. Initially, the suit was filed by the Plaintiff claiming that he is an indigent person. Summons were issued in the suit on 22<sup>nd</sup> April, 2019. At that stage, no enquiry was conducted in respect of the Plaintiff's indigency. On 22<sup>nd</sup> July, 2019, the report *qua* the assets of the Plaintiff was called for by the SDM and the matter was adjourned to 13<sup>th</sup> November, 2019. On 13<sup>th</sup> November, 2019, the e-Court fee of Rs. 1,93,640/- was deposited by the

Plaintiff. Thus, the issue of indigency no longer survived. On that date, 30 days' time was granted for filing the written statement. The said order reads as under: -

*“The plaintiff has filed e-Court fees in the sum of Rs. 1,93,640/-. In that view, the application under Order 33 Rule 1 CPC filed by the plaintiff seeking permission to sue as an indigent person has become infructuous. Mr. Gaurav Shah shall furnish complete particulars of LRs of the defendant No. 1 to the Court within one week with a spare copy to be supplied to the plaintiff against acknowledgement. The defendants are directed to file written statement within 30 days with advance copy to Ld. Counsel for the plaintiff. To come up for replication and steps qua LRs of the defendant No. 1 on 12.12.2019.”*

4. The matter was listed for 12<sup>th</sup> December, 2019, on which date, according to ld. counsel for the Petitioner/Defendant No. 5, the matter was taken up by the Trial Court at 10.30 a.m., at which time Defendant No 5 was present in person, however, the counsel got late by a few minutes. The impugned order was then passed, closing the right of Defendant No. 5 to file the written statement.

5. Ld. counsel for the Petitioner/Defendant No.5 submits that the 30-day period had not expired on 12<sup>th</sup> December, 2019 but would have expired on 13<sup>th</sup> December, 2019. In fact, he submits that he mentioned the matter before the Trial Court and tendered the written statement, along with an application under Order VII Rule 11 CPC. Copy of the written statement so tendered, which has the noting of the Court *ahlmad*, has been perused by the Court.

6. Thereafter, an application for recall of the order dated 12<sup>th</sup> December, 2019 has also been filed, however, it has been adjourned for the date already

fixed in the matter before the Trial Court, i.e. 11<sup>th</sup> March, 2020. The present petition therefore seeks the setting aside of the order dated 12<sup>th</sup> December, 2019.

7. A perusal of the order dated 13<sup>th</sup> November, 2019 shows that 30 days' time was granted for filing of the written statement. The written statement has, in fact, been tendered on 12<sup>th</sup> December, 2019 and has been taken on record by the Court Officer. The application for recall has not yet been listed. In order to obviate any chances of the written statement not being allowed, the present petition has been filed. In view of the fact that the time period for filing the written statement had not lapsed and the same was tendered on 12<sup>th</sup> December, 2019 itself, the written statement is directed to be taken on record. The suit shall now proceed further.

8. With these observations, the petition and all pending applications are disposed of.

**PRATHIBA M. SINGH, J.**

**JANUARY 31, 2020**  
**MR**