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

+ **CM (M) 193/2020**

MD SHOAIB

..... Petitioner

Through: Ms. Tanishq Mehta and Ms. Sonakshi
Monga, Advocates. (M:7678609954)

versus

RAIS AHMAD

..... Respondent

Through: Mr. Rajiv Raheja, Advocate.
(M:9811826000)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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17.02.2020

CM APPL. 6395/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 193/2020 & CM APPL. 6394/2020 (stay)

2. The Petitioner herein/Defendant (*hereinafter* 'Defendant') is aggrieved by the order dated 7th August, 2018 by which the written statement of the Defendant has not been taken on record and the defence has been struck off. A suit for recovery of Rs.8 lakhs was filed by the Respondent herein/Plaintiff (*hereinafter* 'Plaintiff') against the Defendant. The Defendant had two addresses. The service on the first address was effected in November, 2015 and thereafter, the service was again effected on 4th January, 2016 on the other address. No written statement was filed by the Defendant. In September, 2016 an application for condonation of delay was tendered by the Defendant and the same was rejected by the Trial Court. Vide the impugned order dated 7th August, 2018, the application seeking

condonation of delay was dismissed. It is the submission of Id. counsel for the Defendant that the written statement was, in fact, tendered with the application on 28th September, 2016 itself. However, the Court has gone on the premise that no written statement was ever filed. To support her submission, she has placed on record the written statement which has an affidavit attested as of 28th September, 2016. Thus, condonation is prayed for on the ground that the Defendant had time till April, 2016 to file the written statement, which was filed in September, 2016 thus the delay is not very long and the defence of the Defendant ought not to be struck off.

3. Ld. Counsel for the Plaintiff, on the other hand, submits that the stand of the Defendant is incorrect. The Defendant himself moved an application seeking condonation of delay of about 300 days.

4. The record reveals that the Defendant was served on two occasions i.e., once in November 2015 and again in January 2016. The Written statement with attestation of September 2016 has been placed on record. Ld. Counsel's stand is that the written statement was tendered with the application seeking condonation of delay but was not accepted by the Id. Trial judge. The explanation given by the Ld. Counsel appears genuine as the affidavit is clearly attested on 28th September 2016. Thus, it may not be correct to hold that the Petitioner is guilty of negligent conduct. The defence has also been struck off. Considering the facts and circumstances of this case and the recovery that is being sought, as a condition to restore the Defendant's defence a sum of Rs. 3 lakhs is directed to be deposited before the Trial Court. Subject to the said deposit, the written statement is directed to be taken on record, by the Trial Court. The deposit shall be made on or before 30th April, 2020 and the same shall be kept in the fixed deposit on

auto renewal mode and shall abide by the final decision in the suit. The evidence of the Plaintiff shall continue and thereafter, the Defendant shall be allowed to lead his evidence, in accordance with law.

5. With these observations, the petition along with the pending application is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 17, 2020/dk