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

+ **CM (M) 843/2019 & CM APPL. 25627/2019 (stay)**

RAJESH KUMAR

..... Petitioner

Through: Mr. Sunil Gautam and Mr. Satish
Kumar, Advocates with Petitioner in
person. (M:9868515197)

versus

SANT LAL

..... Respondent

Through: Mr. C. M. Mathur, Advocate.
(M:9818438481)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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17.02.2020

1. This petition challenges the order dated 20th March, 2019, by which the Petitioner's/Defendant's (*hereinafter, "Defendant"*) application under Order IX Rule 7 CPC was dismissed by the Trial Court.
2. On 2nd September, 2014, when the Defendant did not appear in the matter, he was proceeded *ex-parte*. The said order reads as under:

"The defendant in the above said matter was served on 30th November, 2013. No written statement is filed by the defendant. Even, the defendant has not been appearing in the matter when the matter is taken up from time to time. Hence, the defendant is proceeded ex parte. The right to file written statement is also closed."

The plaintiff shall file ex parte evidence by way of affidavit(s) along with original documents, within four weeks.

List the matter before the Joint Registrar on 31st October, 2014 for marking the exhibits. Thereafter, the same be listed before Court on 26th November, 2014

for final disposal.”

3. The above order was passed when the suit was pending before the Original Side of this Court. Summons were served on the Defendant's wife on 20th November, 2013. No written statement was filed. The Defendant had also not appeared from time to time. Accordingly, the Court had proceeded against the Defendant *ex-parte*.

4. Ld. counsel for the Defendant submits that there was another suit which was pending and though the Defendant's wife was served in the matter, it was presumed that the notice related to the other suit.

5. Such an explanation cannot be entertained at this stage when the order proceeding *ex-parte* against the Defendant was passed more than 4 years ago. Further, it is submitted that the Plaintiff has also led evidence in the matter and the case is now fixed for final arguments. Accordingly, while not interfering with the impugned order, the Defendant is permitted to address arguments at the final stage. No further orders are called for in this petition.

6. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 17, 2020

dk/T