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

+ **CM(M) 1703/2019 & CM APPL. 51547/2019**

ASHISH JAIN

..... Petitioner

Through: Mr. Ashish Sehrawat & Mr. Kapil
Yadav, Advocates along with
Petitioner in person

versus

POOJA JAIN

..... Respondent

Through: Mr. Sudhir Gupta, Advocate (M-981
885241)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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10.01.2020

1. The present petition arises out of the impugned order dated 19th September, 2019 by which the application under Order IX Rule 7 CPC filed by the Petitioner who is the Defendant No.1 in the suit was dismissed by the Trial Court. The suit has been filed for partition, permanent injunction and rendition of accounts by Smt. Pooja Jain against the Petitioner – Mr. Ashish Jain and the other family members. The suit was first listed on 16th May, 2019 after issuance of summons, on which date, the Petitioner did not appear in the matter and accordingly was proceeded *ex-parte*. On the very next date, the Petitioner moved an application under Order IX Rule 7 CPC which has been rejected by the Trial Court on the ground that there are no reasonable grounds to set aside the *ex-parte* order.

2. Ld. counsel for the Petitioner submits that the Petitioner did not

appear only on one date and upon acquiring knowledge that he was proceeded *ex-parte*, on the next date itself, moved the application. Hence there was no intention to delay.

3. Ld. counsel for the Respondent, however, submits that the Petitioner was well aware when he was served on 7th May, 2019 about the filing of the partition suit by Smt. Pooja Jain and hence, there was no justification for non-appearance on the returnable date, i.e., 16th May, 2019.

4. Considering the overall facts as also the fact that the returnable date in the suit was 16th May, 2019 on which date the Petitioner/Defendant did not appear and the application was filed on the very next date, the application under Order IX Rule 7 CPC is allowed subject to payment of Rs.10,000/- as costs to the Respondent/Plaintiff. The order proceeding the Petitioner/Defendant *ex-parte* passed is set aside. The costs shall be paid to the Plaintiff's counsel on the next date before the Trial Court.

5. The written statement already filed by the Petitioner shall be taken on record and the suit shall proceed further.

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

PRATHIBA M. SINGH, J.

JANUARY 10, 2020

Rahul