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

% ***Date of decision: 13th August, 2024***

+ CM(M) 886/2018
YOGENDER KUMAR

.....Petitioner

Through: Mr. Parag Kumar, Advocate.

versus

LIC HOUSING FINANCE LTD

.....Respondent

Through: Ms. Roma Singh.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner is defendant No.1 and is defending a non-commercial suit.
2. I have seen the order dated 29th November, 2017 passed by the learned Trial Court whereby it noticed that the written statement had not been filed within the stipulated period and no application seeking condonation of delay had either been filed.
3. Learned Trial Court granted last and final opportunity to defendant No.1 to file appropriate application seeking condonation of delay with advance copy to the opposite side failing which, a cost of Rs.10,000/- to be imposed upon them.
4. Thereafter, when the matter was taken up by the learned Trial Court on 16th April, 2018, it noticed that neither the cost had been paid nor the application seeking condonation of delay had been submitted within the



stipulated period.

5. Since according to petitioner, the delay had occasioned because of the inaction on the part of the previous counsel and since the learned Trial Court was of the view that the petitioner had not filed any complaint with any authority seeking action against her such previous counsel, his such application was dismissed.

6. It is in the above backdrop that the present petition has been filed under Article 227 of the Constitution of India praying that the abovesaid order dated 16th April, 2018 may be recalled and the delay in filing the written statement may be condoned.

7. Learned counsel for respondent (plaintiff) has joined the proceedings through Video Conferencing and she does admit that the written statement was filed by the defendant No.1 but she also contends that since no justifiable reason had been supplied for condoning the delay, the learned Trial Court was justified in dismissing such application.

8. This matter was taken up by this Court way back on 6th August, 2018 and after hearing the initial submissions made by the learned counsel for petitioner, the petitioner was directed to deposit cost of Rs. 10,000/- before the learned Trial Court within four days.

9. Such cost was deposited with the leaned Trial Court on 8th August, 2018.

10. Learned counsel for respondent also does not dispute that the cost has been deposited.

11. It seems that nothing is happening before the learned Trial court as there was stay on the proceedings in terms of order dated 7th October, 2022.

12. Admittedly, though the written statement had been filed by the



petitioner herein (defendant No.1) however, he should have been vigilant and should have also filed the application seeking condonation of delay in time giving reason as to why he could not file the written statement, initially.

13. Be that as it may, keeping in mind the overall facts and circumstances of the case and the fact that the cost has already duly been deposited before the learned Trial Court, present petition is allowed with the direction that the written statement filed by the defendant no.1 Shri. Yogendra Kumar would be deemed to be on record and he would be permitted to participate in the proceedings.

14. Since, as per the impugned order the defence of defendant No.2 has been struck off, it needs to be clarified that in view of the fact that the petition in question filed by the defendant No. 1 has been allowed and his written statement has been directed to be taken on record, he would be, therefore, permitted to participate in the proceedings in accordance with law.

15. Needless to say, the plaintiff would be at liberty to seek disbursement of the aforesaid cost of Rs.10,000/- by moving appropriate application before the learned Trial Court.

16. The present petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

AUGUST 13, 2024/ss