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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25.03.2021

+ CM(M) 49/2021 & CM APPL. 2252/2021

CHAND SHARMA

..... Petitioner

Through Mr.O.P.Saxena with Ms.Usha
Saxena, Advs.

versus

OM PRAKASH GULATI

..... Respondent

Through Mr. Vijay Kinger, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 04.03.2020 passed by the learned Additional District Judge-03, Rohini Courts, North District, in Suit filed by the respondent, being CS No. 433 of 2017, titled ***Om Prakash Gulati v. Pramod Chandra & Ors.***, dismissing the application of the petitioner, who is defendant no.2 in the Suit, seeking recall of the order dated 02.02.2018 by which the right of the petitioner to file written statement on record was closed.

2. The Impugned Order itself records that the petitioner was served with the summons of the Suit by way of affixation on 05.09.2017 and had appeared on 12.10.2017. On the said date, a

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request was made by the petitioner for supply of the complete set of documents. The Suit thereafter was adjourned to 18.01.2018, on which date, the petitioner filed an application under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). The same was allowed by the learned Trial Court, subject to payment of Rs.1,000/- and with a direction that a final opportunity is granted to the petitioner for filing of written statement by the next date of hearing, which was fixed as 02.02.2018.

3. On 02.02.2018, the petitioner appeared along with a proxy counsel, however, neither the cost was paid nor the written statement was filed. The learned Trial Court therefore, was pleased to strike off the defence of the petitioner by its order dated 02.02.2018.

4. The subsequent order dated 17.04.2018 records that the petitioner had thereafter filed his written statement on 09.02.2018, and on 17.04.2018 had presented an application seeking recall of the order dated 02.02.2018. At this stage, I must note that the Impugned Order, however, records that the written statement was filed only on 09.10.2018. The said recording in the impugned order is therefore, incorrect to the record. However, in my opinion, the same will not have any effect on the outcome of the present petition for the subsequent conduct of the petitioner in the Suit.

5. By the order dated 17.04.2018, the learned Trial Court was pleased to direct the listing of the application filed by the petitioner seeking recall of the order dated 17.04.2018, for arguments on 01.08.2018. On 01.08.2018, the order records that in spite of the Suit

being called repeatedly, none appeared for the petitioner. The Suit was, therefore, adjourned to 04.10.2018. On 04.10.2018 again, none appeared for the petitioner and the petitioner was proceeded *ex parte*. Thereafter, the Suit was listed on 30.11.2018, 01.02.2019 and 05.03.2018, when again none appeared for the petitioner. The statement of PW-1 was also recorded in the interregnum.

6. On 20.04.2019, the petitioner then moved an application seeking setting aside of the order dated 04.10.2018 passed by the learned Trial Court by which the petitioner had been proceeded *ex parte*. The said application remained pending and thereafter, on 04.03.2020, the Impugned order had been passed, dismissing the application of the petitioner seeking recall of the order dated 02.02.2018.

7. The learned counsel for the petitioner submits that as the Suit was at the initial stage, the order dated 02.02.2018 should have been recalled by the learned Trial Court and the written statement filed by the petitioner be allowed to be taken on record. He submits that the Impugned Order is premised on an incorrect presumption that the written statement was filed by the petitioner only on 09.10.2018. He further submits that the respondent has, during the pendency of the present petition filed an application under Order VI Rule 17 of the Code seeking amendment in the plaint and therefore, at least now the petitioner should be allowed to file his written statement.

8. On the other hand, the learned counsel for the respondent vehemently submits that the conduct of the petitioner clearly

demonstrates an intent to delay the adjudication in the Suit filed and therefore, the petitioner deserves no indulgence from this Court.

9. I have considered the submissions made by the learned counsels for the parties.

10. The above sequence of events in the Suit clearly demonstrates that the petitioner had been deliberately delaying the adjudication of the Suit firstly, by not filing the written statement on record on time and thereafter, by not appearing before the learned Trial Court. The explanation given by the petitioner for his non-appearance is that he was advised by the counsel not to enter appearance in the Suit. This itself shows the casual manner in which the petitioner took the suit proceedings. The learned counsel for the respondent has rightly pointed out that no document in support of the cause contended by the petitioner for not filing his written statement was filed along with the application. There was also no explanation for non-payment of the cost. The petitioner therefore, deserved no indulgence of the court and his right to file written statement was rightly closed by the learned Trial Court.

11. As far as the filing of an application seeking amendment of the plaint is concerned, the learned counsel for the respondent submits that the same is merely formal in nature. However, I need not detain myself with the same as the said application is yet to be adjudicated upon by the learned Trial Court and in case the same is allowed, the consequent order thereon shall also have to be first considered by the learned Trial Court itself.

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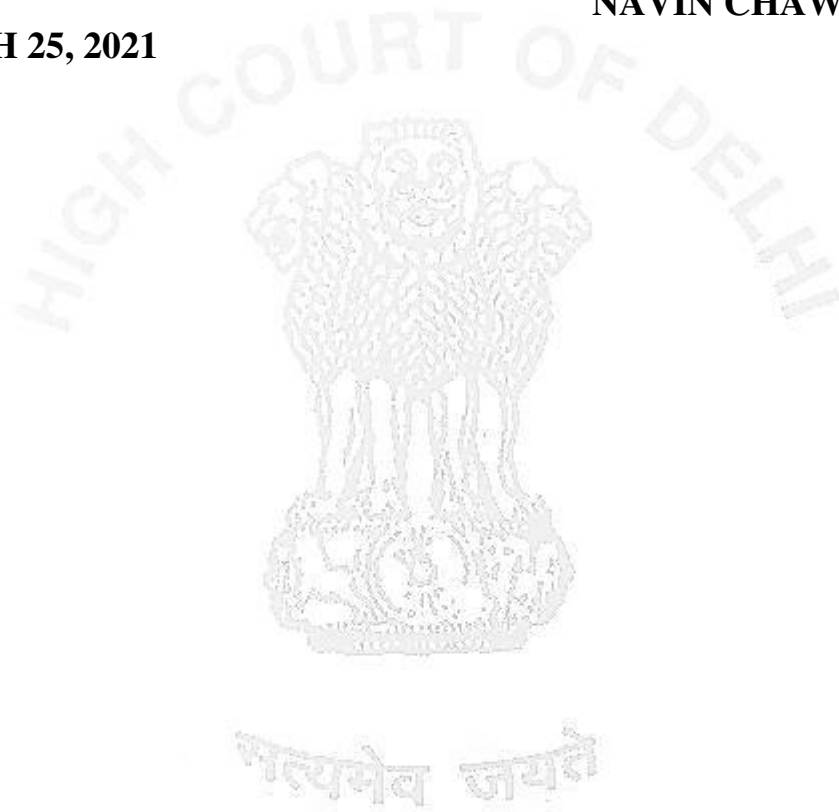
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12. In view of the above, I find no infirmity in the order passed by the learned Trial Court.

13. The present petition is dismissed with costs quantified at Rs.10,000/-.

NAVIN CHAWLA, J

**MARCH 25, 2021
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