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

+ C.R.P. 79/2022

SH DHARAM RAJ

..... Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

versus

JAI KISHAN

..... Respondent

Through: None.

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Date of Decision: 27th May, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

**C.R.P. 79/2022 & CM APPL.25680/2022 (stay), CM APPL.25681/2022
(for condonation of delay of 720 days)**

1. Present revision petition has been filed against the impugned order dated 17.02.2020, whereby, an application of the petitioner for taking the written statement on record was dismissed with costs of Rs.10,000/-
2. Learned Trial Court also passed a direction that the payment of cost of Rs.10,000/- is a pre-requisite for his further participation in the case. The impugned order itself is self-explanatory and reveals that in the suit bearing CS No.27/2017 instituted in the year 2017, the defendant/petitioner admittedly was served in April 2017 and no written statement was filed within the prescribed period of 90 days. It is also an admitted case that on account of non-filing of the written statement, the defence of the

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defendant/petitioner was struck off. An application – Annexure - P3 was moved only on 17.02.2020, which was dismissed by the learned Trial Court *inter alia* on the ground that the defendant/petitioner was admittedly served in April 2017 and appearance had also been made on behalf of the defendant/petitioner. The defendant/petitioner had taken a plea that as he was suffering from depression, the written statement could not be filed. Learned Trial Court noted that the grounds stated in the application were not supported with medical documents regarding the defendant/petitioner being under depression during the relevant period. Though the limitation period for filing a revision petition is 90 days, the present petition has been filed after more than two years of the impugned order. Along with the petition, an application for condonation of delay has been moved primarily on the ground that the first order dated 23.03.2020 of the Hon'ble Supreme Court in ***Cognizance for Extension of Limitation***, In Re *Suo Moto W.P.(C) No.3/2020*, *inter alia*, held as under:-

“2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by this Court in present proceedings.”

3. The period of limitation was further extended up till 28.02.2022 vide order dated 10.01.2022 in the case titled ***Cognizance for Extension of Limitation***, In Re *Suo Moto: (2022) 3 SCC 117*. Thus the limitation was exempted only w.e.f; 23.03.2020, whereas the present order is of *C.R.P. 79/2022*



17.02.2020. Be that as it may be, I have examined the petition on merits also.

4. Order VIII Rule 1 provides that the defendant/petitioner can file written statement within 30 days from the date of service of summons. The proviso of Order VIII Rule 1 provides that where the defendant/petitioner fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than 90 days from the date of service of summons. Thus, the law provides a maximum period of 90 days for filing of the written statement.

5. During the course of arguments, learned counsel for the petitioner submits that subsequently, he moved an application for waiver of costs and for seeking permission to take part in the proceedings, however, the same had also been dismissed. Learned counsel for the petitioner submits that he is ready to pay the costs but he may be permitted to take part in the proceedings as per law.

6. I consider that the learned Trial Court has rightly held that there was no ground for condonation of delay in filing of the written statement. It may be noted that the defence of the petitioner has already been struck off. However, I consider that, in the interest of justice, if the petitioner pays the cost of Rs.10,000/- to the respondent within a week, the learned Trial Court may permit the petitioner to take part in the proceedings as per law.

7. With these observations, the present petition along with the pending



application stands disposed of.

8. Order *Dasti* under the signatures of the Court Master.

DINESH KUMAR SHARMA, J

May 27, 2022
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