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

% Judgment delivered on: 15.12.2022

+ CM(M) 1279/2022 and CM No.50567/2022

SMT. HARSHA SONI

..... Petitioner

versus

SHRI SURAJ BHAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anoop Prakash Awasthi, Advocate

For the Respondent : Mr. Mukesh Kumar Drall, Mr. Sonu Kirar,
Mr. Rachit Khandelwal and Mr. Rohan
Agarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. With the consent of learned counsel for the parties, petition is taken up for hearing today.

2. Learned counsel appearing on behalf of the Petitioner submits that the Petitioner was never served with the summons of the suit in the year 2017. In the meanwhile, Trial Court vide order dated 06.07.2017 had proceeded the Petitioner *ex parte*.

3. Learned counsel submits that it was only during the first week of January, 2022 that she was informed about the pendency of the suit by

Defendant No.2 and after certain enquiries and inspecting the file, the Petitioner came to know that she was proceeded *ex parte* as far back as on 06.07.2017.

4. Without wasting any time, Petitioner had approached the learned Trial Court with an application under Section 151 CPC seeking setting aside of the *ex parte* order alongwith written statement and reply to application under Order 39 Rules 1 and 2 CPC as filed by the Respondent.

5. Learned counsel submits that the learned Trial Court did not consider the explanation tendered by the Petitioner in the application under Section 151 CPC and dismissed the same vide the impugned order.

6. It is trite that the contents of the application would be the determining factors to adjudicate in a Court of law rather than the provision or nomenclature under which the relief is sought in that application.

7. Learned counsel appearing on behalf of the Respondents fairly agrees, in the interest of justice, that the impugned order be set aside and the written statement along with reply to the application under Order 39 Rule 1 and 2 CPC is taken on record. However, the Petitioner may be subjected to heavy costs for the delay.

8. In view of the above submissions, this Court is of the opinion that interest of justice would be sub-served as also for the reason that the disputes should be adjudicated on merits rather than on technicalities, the impugned order be set aside.

9. Accordingly, impugned order dated 22.08.2022 as well as order dated 06.07.2017 whereby the Petitioner was proceeded *ex parte* are quashed and set aside subject to payment of costs of Rs.5,000/- to be paid to the Respondent on or before 19.12.2022.

10. In view of the fact that the impugned orders have been quashed, learned Trial Court is directed to take the written statement and reply to the application under Order 39 Rules 1 and 2 CPC filed by the petitioner on record. Replication and rejoinder respectively, if any, be filed within the time to be granted by the Trial Court on 19.12.2022, the date already fixed before it.

11. With these directions, petition and the application filed herewith are disposed of.

TUSHAR RAO GEDELA, J

DECEMBER 15, 2022/yg