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

% Judgment delivered on: 15.02.2023

+ CM(M) 249/2023 & CM APPL. 7488/2023, CM APPL.
7489/2023

NARESH PODDAR

..... Petitioner

versus

KUSUM LATA AGGARWAL AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Jyoti Nambiar, Advocate.

For the Respondents : Mr. Counsel (Appearance not given).

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 parties, the present petition is taken up for final disposal.
2. The petitioner challenges the order dated 24.08.2022 passed by the learned Trial Court in CS DJ 62/2022 titled as “Kusum Lata Aggarwal vs. Naresh Poddar”, whereby the learned Trial Court has closed the right of the petitioner to file the written statement and had posted the matter for the respondent/ plaintiff’s evidence.
3. The petitioner also challenges the order dated 11.11.2022 passed

by the learned Trial Court on an application seeking recall of the order dated 24.08.2022, which was dismissed.

4. Learned counsel appears for the respondents/ plaintiff and submits that the service of notice was effected upon the petitioner on 26.02.2022 and subsequent thereto, from 26.02.2022 till date the petitioner has not filed the written statement.

5. Learned counsel for the respondents submits that the attitude of the petitioner/ defendant is absolutely lackadaisical and callous and had there been any kind of sincerity the petitioner would have filed written statement during this period.

6. This Court has considered the impugned orders as well as the submissions made by learned counsel for the parties.

7. This Court is of the considered view that the issue raised herein is no more *res-integra* in view of the fact that the Hon'ble Supreme Court in authoritative pronouncements in the case of ***Salem Advocates Bar Association vs UOI*** reported in **2003 (1) SCC 49**, ***Kailash vs. Nankhu*** reported in **(2005) 4 SCC 480** and ***Bharat Kalra vs. Raj Kishan Chabra*** reported in **2022 SCC OnLine SC 613** has time and again directed that in ordinary civil suits the merits of the case are to be considered and technicalities need not come in the way of the parties litigating on the basis of evidence and other pleadings which are in their favour and delay in filing written statements can be condoned for sufficient reasons.

8. In view of the aforesaid judgments as also in view of the submissions made on behalf of the petitioner, this Court quashes the orders dated 24.08.2022 and 11.11.2022.

9. The petitioner is directed to file the written statement on or before

21.02.2023 when the suit is stated to be listed before the learned Trial Court.

10. The learned Trial Court is directed to take on record the written statement and proceed further in accordance with law.

11. The aforesaid direction permitting the petitioner to file the written statement would, however, be subject to a cost of Rs. 35,000/- to be paid by the petitioner to the respondent within three days from today against a proper receipt which may be filed before the learned Trial Court.

12. If there is any infraction in the direction of payment, the permission so granted shall deemed to be automatically having vacated.

13. The petition is disposed of in the above terms.

TUSHAR RAO GEDELA, J

FEBRUARY 15, 2023/nd

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