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

Date of decision: 03.08.2023

+ CM(M) 462/2023

MOHAMMAD ALI

..... Petitioner

Through: Mr. Sanjeev Bhatia and Ms. Sunita Rani, Advocates

versus

SMT MANISHA DHAWAN

..... Respondent

Through: Mr. B. Khan and Mr. Anurag Bindal and Mr. Ankur Gupta, Advocates alongwith Husband of applicant

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 39341/2023

1. This is an application filed by the Respondent seeking advancement of hearing. The matter is listed on 12.10.2023.
2. Issue notice. The learned counsel for the Petitioner accepts notice.
- 2.1. He states he has no objection to the advancement of hearing.
3. Accordingly, the application is allowed and with the consent of the parties, the matter is taken up for hearing today.

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4. This petition filed under Article 227 of the Constitution of India impugns the order dated 20.12.2022 passed by the ADJ-08, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS DJ 412/2022 titled as "*Manish Dhawan v. Mohammad Ali*" whereby the Trial Court declined to take the written statement of the Petitioner on record.



4.1. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit. The Plaintiff has filed the civil suit for inter-alia recovery of possession, arrears of rent and mesne profits.

5. The learned counsel for the Petitioner states that the Petitioner herein was served with the copy of the summons on 25.02.2022 and the written statement was filed belatedly on 02.09.2022 without any application for condonation of delay.

5.1. He states that the delay in filing the written statement occurred on account of the eye surgery of the erstwhile counsel engaged by the Petitioner.

5.2. He states that the Petitioner herein be permitted to place his written statement on record and the Respondent be compensated with the legal costs as otherwise, the Petitioner herein will suffer great prejudice as his defence will not come on record.

5.3. He states that in fact after receiving the written statement, the Respondent herein has already filed an application under Order XII Rule 6 Code of Civil Procedure ('CPC') relying upon the averments made said written statement and for this additional reason, reference to the same will become necessary while addressing arguments on the Respondent's application filed under Order XII Rule 6 CPC.

5.4. He states that the Petitioner undertakes not to seek any unnecessary adjournment before the Trial Court and cooperate in the expeditious disposal of the suit.

6. In reply, the learned counsel for the Respondent states that though he does not admit that the Petitioner has any reasonable grounds for filing the written statement belatedly, he states, however, with a view to expedite his trial, he has no objection if the impugned order is set aside, so that, his



application filed under Order XII Rule 6 CPC and Orders XXXIX Rule 10 CPC can be heard at the earliest.

6.1. He states that the date of service of summons on the defendant is 25.05.2022 and the date of filing the written statement is 27.09.2022.

7. This Court has considered the submissions of the Parties and perused the petition.

8. In view of the submissions made by the parties, the impugned order is set aside and the Petitioner's written statement filed on 02.09.2022/27.09.2022 is directed to be taken on record, subject to the Petitioner making a payment of cost of Rs. 5,000/- to the Respondent within a period of ten (10) days.

9. The Petitioner is directed to file his affidavit of admission/denial of documents filed by the Plaintiff within a period of ten (10) days. The undertaking of the Petitioner recorded at paragraph 5.4 is taken on record and he is bound down to the same.

10. Replication, if any, be filed by the Respondent within four (4) weeks after receipt of the affidavit of admission/denial of documents.

11. It is made clear that if the Petitioner fails to file affidavit of admission/denial of documents within the time sought from this Court and/or fails to pay the costs, his right to file the written statement shall stand struck off, without seeking any clarification from this Court. No application for extension of time will be entertained.

12. With the aforesaid directions, the present petition is allowed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 3, 2023/rhc/asb