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

*Date of decision: 11.08.2023*

+ **CM(M) 211/2019 & CM APPL. 5969/2019**

**AJAY KUMAR**

..... Petitioner

Through: Mr. Sunil Choudhary, Advocate with  
Petitioner in person

versus

**DEEPAK NANDA**

..... Respondent

Through: Respondent in person

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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):**

1. This petition filed under Article 227 of the Constitution of India impugns the orders dated 10.07.2017 and 08.10.2018 passed by ADJ, North West District, Rohini Courts, Delhi ('Trial Court') in civil suit no. 578876/2016 titled as '**Shri Deepak Nanda v. Ajay Kumar**'.

1.1. The Trial Court *vide* order dated 10.07.2017 closed the right of the Petitioner herein i.e., the defendant to file his written statement.

1.2. The Trial Court *vide* order dated 08.10.2018 dismissed the application filed by the Petitioner on 10.10.2017 for recall of the order dated 10.07.2017.

1.3. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit filed for mandatory injunction and recover of Rs. 5 lakhs along with interest at 24% per annum.

2. The learned counsel for the Petitioner states that the suit was instituted



on 19.08.2016. He states that the summons issued in the suit were not received by the Petitioner since admittedly, the Petitioner was in judicial custody from 12.06.2016 till 22.05.2017.

2.1. He states that the wife of the Petitioner herein appeared before the Trial Court on 23.11.2016 in the civil suit. He, however, states that the Petitioner herein is estranged from his wife and litigation with his wife started in the year 2015. He states that he learnt about the pendency of the suit from the Investigating Officer after his release from the custody and that is when he entered appearance before the Trial Court.

2.2. He states that the suit is presently at the stage of defendant's evidence and is next listed on 27.10.2023.

2.3. He states that the Petitioner undertakes to this Court that he shall remain personally present on each date of hearing before the Trial Court and he will not seek any adjournment either on his account or on account of his lawyer. He further undertakes that in case his lawyer is unavailable, he will make alternate arrangements for appearance of a lawyer on the said date, but no adjournment will be sought before the Trial Court.

2.4. He states that written statement with documents was filed along with the application dated 10.10.2017. He states that no further documents are to be filed.

2.5. He states that the Petitioner proposes to examine himself as DW-1 and summon a witness from the Government authority to prove the transfer of the vehicle from the Petitioner to the Respondent. He prays that his right to file his written statement and lead evidence be restored subject to payment of reasonable costs.

3. The Respondent is personally present in Court. He states that his



Counsel is unavailable to address arguments. He states that he is not in a position to address arguments. The Respondent entered appearance in these proceedings on 12.07.2019

4. This matter has remained pending on this Court's board since 08.02.2019 and therefore, this Court deems it appropriate to dispose of this matter on the basis of the record.

5. This Court has heard the counsel for the Petitioner and perused the record.

6. It is a matter of record that when the summons were issued in the suit in the year 2016, the Petitioner was in judicial custody and he remained in custody until 22.05.2017. Admittedly, no summons was served on the Petitioner in the jail through the jail authorities.

7. In view of the submissions of the Petitioner that he is estranged from his wife and first proceedings between them were initiated in the year 2015, the service of summons on his wife and her appearance in the Trial Court on 23.11.2016 in pursuance thereof has been reasonably explained by the Petitioner. The Petitioner, therefore cannot be ascribed knowledge based on the appearance dated 23.11.2016.

8. The Petitioner was released from judicial custody on 22.05.2017 and he entered appearance in the civil suit on 10.07.2017 and sought time to file his written statement, however, the Trial Court declined any further extension of time and closed his right to file the written statement by the impugned order dated 10.07.2017.

8.1. The Petitioner thereafter filed an application on 10.10.2017 along with his written statement and the documents; the said application remained on file of the Trial Court for almost a period of one (1) year and was dismissed by



the Trial Court by the impugned order 08.10.2018.

8.2. The Petitioner has thereafter immediately filed this petition impugning the orders dated 08.10.2018 and 10.07.2017 and seeking permission to defend the suit on merits.

9. A perusal of the impugned order dated 10.07.2017 does not reveal the date on which the summons were served on the wife of the Petitioner. As noted above, the Petitioner was released from judicial custody on 22.05.2017 and he entered appearance before the Trial Court on 10.07.2017. The written statement was filed on record on 10.10.2017.

9.1. In the opinion of this Court in the facts and circumstances of this case, since there is no finding of the Trial Court with respect to the date on which the Petitioner acquired knowledge about the pendency of the civil suit after being released from judicial custody, this Court presumes that the Petitioner acquired knowledge in or around July, 2017, when he entered appearance. Thus, the time taken by the Petitioner between July, 2017 to 10.10.2017 in filing the written statement should be condoned so as to enable the Petitioner to defend the suit on merits, subject to him making payment of legal costs of Rs. 10,000/- to the Respondent within a period of two (2) weeks from today.

10. The statement of the counsel for the Petitioner that the written statement with all documents already stands filed is taken on record and he is bound down to the said statement. No further opportunity of filing any other documents will be granted to the Petitioner. The undertaking of the Petitioner recorded at paragraph no. 2.3 above is taken on record and he is bound down to the same. In case, the Petitioner fails to abide by the said undertaking, the Trial Court shall pass appropriate order for striking off the defense of the Petitioner.



10.1. The counsel for the Petitioner has made a statement that the Petitioner only wishes to examine two (2) witnesses as noted hereinabove and the Petitioner is bound down to the said statement. It is directed that he will not be permitted to increase the number of witnesses. This direction has been passed to streamline the trial and avoid delays.

11. The Respondent is at liberty to file his replication within a period of four (4) weeks from today.

12. The Petitioner has given particulars of his existing address and his phone number before this Court. The same is recorded in this order as under and is taken on record:

*“Name: Mr. Ajay Kumar  
Address: LD-1, Pitampura Delhi-110034  
Ph. No: 8799753484”*

12.1. The Petitioner is directed to file an affidavit with respect to these particulars including the phone number before the Trial Court to update the record.

13. The counsel for the Petitioner, Mr. Sunil Choudhary states that he will file his *vakalatnama* within a period of one (1) week.

14. With the aforesaid directions, the present petition is disposed of. Pending application stands disposed of.

**MANMEET PRITAM SINGH ARORA  
(JUDGE)**

**AUGUST 11, 2023/rk/aa**