



\$~3

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

Date of decision: 03.08.2023

+ CM(M) 1026/2023

PRAMOD KUMAR SINGH

..... Petitioner

Through: Mr. Brahmanand Gupta, Advocate.

versus

SUBODH KUMAR KHANDELWAL

..... Respondent

Through: Mr. Parvinder Chauhan and Ms. Aakriti Garg, Advocates.

%

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 order is being passed in continuation of the order dated 05.07.2023 passed in this petition.
2. Learned counsel, Mr. Parvinder Chauhan, enters appearance on behalf of the Respondent.
3. Learned counsel for the Petitioner states that he has placed on record fresh affidavit of admission/denial of the documents filed with the plaint, on 12.07.2023 in these proceedings and has served an advance copy of the same to the counsel for the Respondent. He states that he is also carrying with him a demand draft for an amount of Rs. 13,000/-. He states that the said costs be accepted and the delay caused by the Petitioner in filing his affidavit of admission and denial of documents, in the prescribed format be condoned.



4. In reply, learned counsel for the Respondent states that he has perused the fresh affidavit of admission and denial of documents filed by the Respondent and is satisfied that the same is as per the prescribed format.

4.1. He further states that he disputes the contention of the Petitioner, as recorded at para 2.3 of the order dated 05.07.2023. In this regard, he relies upon the provision of the Order 11 Rule 4(2) of CPC, as it applies to commercial suits, to contend that the format in which the admission denial of documents has now been filed is statutorily prescribed. He states that the Petitioner's counsel should have been diligent in filing the affidavit of admission and denial of the documents.

5. This Court has considered the submissions of the counsel for the parties and perused the record. The written statement of the Petitioner was taken on record by the Trial Court *vide* order dated 14.02.2023 subject to payment of costs. In fact, the replication to the written statement by the Respondent also stands filed as recorded in the suit dated 25.03.2023. However, the defence of the Petitioner was struck off on 01.05.2023 on account of the twin facts i.e., (i) the Petitioner's default in making payment of Rs. 3,000/-; and (ii) his failure to file the affidavit of admission / denial documents in the prescribed format. This Court finds merit in the submission of the Respondent that the Petitioner was negligent in not filing the affidavit as per the prescribed format.

6. This Court is of the opinion that in view of the fact that the Petitioner has now taken corrective steps, the delay which has been caused to the Respondent can be compensated with the payment of additional costs of Rs. 10,000/-. It would be in the interest of justice that the claims of the Respondent in the suit are decided on merits.

7. The Petitioner has further undertaken to this Court that he will



diligently appear before the Trial Court on each date of hearing and not seek any unnecessary adjournment before the Trial Court. The undertaking of the Petitioner is taken on record and he is bound down to the same. In case the Petitioner fails to appear, his defence will be liable to be struck off.

8. In the aforesaid facts, the impugned orders dated 01.05.2023 and 06.06.2023 are set aside and the written statement of the Petitioner and the and a fresh affidavit of admission / denial of documents are directed to be taken on record.

9. The bank draft of Rs. 13,000/- towards legal costs has been handed over to the learned counsel for the Respondent during the course of the hearing and the same has been accepted by him.

10. With the aforesaid directions, the present petition is allowed. The pending application stands disposed of.

11. The Petitioner shall ensure that the original affidavit of admission and denial of documents, e-filed in these proceedings, is filed physically before the Trial Court before the next date of hearing.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 3, 2023/msh

[Click here to check corrigendum, if any](#)