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

Date of decision: 04.08.2023

+ **CM(M) 1184/2023 & CM APPL. 37892/2023**

MAHENDER K. TIWARI

..... Petitioner

Through: Mr. Vivek Kumar Mishra and Mr.
Irshad A. Siddiqui, Advocates

versus

SMT. BHARTI TRIVEDI

..... Respondent

Through: Nemo.

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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. 37893/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1184/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 10.03.2023 passed by District Judge, Commercial Court, North East District, Karkardooma Courts, Delhi ('Trial Court') in Civil Suit No. 334/2019, titled as '**Bharti Trivedi v. Mahender K. Tiwari**', whereby the Trial Court has dismissed the Petitioner's application for recall of the order dated 04.08.2022, striking off his defence.

1.1. The Petitioner is the original defendant and the Respondent is the original plaintiff in the civil suit.



1.2. A perusal of the record shows that the civil suit was instituted by the plaintiff on 18.11.2019 for recovery of a sum of Rs. 3,76,000/-.

2. The defendant (i.e., the Petitioner) was duly served and entered appearance on 04.03.2020. The defendant was directed to file his written statement within the statutory period, however, he failed to do so. In these circumstances, the Trial Court *vide* order dated 04.08.2022 (after 2½ years) was pleased to strike off the defence of the Petitioner herein for non-filing the written statement.

3. The Petitioner thereafter on 25.08.2022 filed an application seeking permission to file the written statement. However, even with this application no written statement was enclosed.

3.1 In these circumstances, the Trial Court by the detailed impugned order dated 10.03.2023 dismissed the application of the Petitioner herein after taking note of his negligence in prosecuting this matter. The relevant portion of the impugned order reads as under:

“7. It is pertinent to discuss here that my Ld. Predecessor, vide order dated 27.01.2020 issued the process for ordinary civil suit for recovery and not for suit Under Order XXXVII CPC. Further, from the process received back, it is also revealed that the process for ordinary Civil Suit for recovery was issued to the defendant, in pursuance of which, the defendant appeared in the Court on 04.03.2020 alongwith two Advocates. Further, it was in the presence of both his Advocates that the Court provided copy of the petition and documents to the defendant and also directed the defendant to file written statement. Thereafter, my Ld. Predecessor repeatedly granted time to the defendant to file written statement, however, despite various opportunities granted, neither the defendant appeared before the Court nor he filed written statement and hence, the contention of the defendant that he was not aware that the written statement was to be filed within stipulated period, is not supported by the record.

Further, though, the defendant has alleged that his counsel told him that he need not to appear in the Court till he receives Summons for Judgment, is also not in consonance with the record. After all, the counsels for the defendant are legal persons, who very well understand the orders passed by the Court and it also cannot be stated that the order of filing of written statement by the defendant was not passed in their presence or that they were



not aware that the written statement was to be filed or that the defendant was not present on that day or that he was not aware of said the order of filing of written statement.

In fact, contention of the defendant that his Advocates apprised him not to appear till receiving Summons of Judgment is not supported by any material on record and simply shifting the burden on the counsels by the defendant is not fair and as such, the defendant could not show any plausible explanation for not filing the written statement despite granting various opportunities.

8. *From the perusal of record, it is also revealed that my Ld. Predecessor granted various opportunities time and again to the defendant to file written statement and defence of the defendant was struck off on 04.08.2022 and only thereafter, on 27.08.2022, the defendant has filed the application Under Order VIII Rule 1 CPC read with Section 151 CPC.*

It is also appropriate to discuss that even the time extended by Hon'ble Apex Court in filing the written statement has lapsed. In the given facts and circumstances, in considered opinion of the Court, the said application of the defendant filed Under Order VIII Rule 1 CPC read with Section 151 CPC is devoid of any merits and is hereby dismissed and the written statement is not taken on record.

(Emphasis Supplied)

3.2 The Trial court in the impugned order duly took into consideration the judgment of the Supreme Court with respect to extension of limitation during the COVID pandemic, in the impugned order and concluded that the Petitioner had failed to explain the non-filing of the written statement even after availing the benefit of the extension of limitation as per the said judgment.

4. Though the impugned order was passed on 10.03.2023, the Petitioner herein has now filed this petition on the 25.07.2023 (after five months) assailing the said orders dated 10.03.2023 and 04.08.2022, however, even with this petition the Petitioner has not filed his written statement.

5. This Court has been apprised that the matter is listed for final arguments before the Trial Court on 18.08.2023.

6. The Petitioner was served on 04.03.2020 and even after 3 ½ years the Petitioner has not drawn up his written statement and is merely filing



successive applications and petitions for seeking permission to file the same. The Petitioner had sufficient opportunity to file his written statement and has elected not to do so. The present petition is also an attempt to merely prolong the trial proceedings.

7. In the facts and circumstances of this case, it is writ large that the Petitioner, in fact, has no defence to offer to the claim in the plaint and is merely protracting the final adjudication of the suit. There is no merit in the petition and the impugned orders dated 10.03.2023 and 04.08.2022 suffers from no infirmity in law and fact.

8. Accordingly, this petition is dismissed. Pending application, if any, are also disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 4, 2023/rk/aa

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

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