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

% Judgment delivered on: 17.01.2023

\+ CM(M) 1497/2019 & CM APPL. 45651/2019

LALIT DHARAMCHAND KAPUR ..... Petitioner

versus

SURESH KUMAR & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rishabh Tripathi and Mr. A. K. Khanna and Ms. Anu R. Khanna, Advs.

For the Respondents : Respondent No.1 in person.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges order dated 08.08.2019 passed by the learned Trial Court whereby the application of the petitioner under Order IX Rule 7 Code of Civil Procedure, 1908 seeking setting aside the exparte proceedings vide order dated 12.02.2018 and the request for taking the written statement on record was dismissed. By virtue of the impugned order, the application of the respondent under Order VIII Rule 1 Code of Civil Procedure, 1908 striking off the defence of the petitioner also was allowed.

2. Learned counsel for the petitioner submits that the parties are

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related to each other being maternal cousins, and the respondent was aware that the petitioner was residing in the United Kingdom for the last 45 to 50 years and therefore providing the address of Gurgaon and Amritsar for purpose of the service of the petitioner was only to mislead the Court and depriving him from defending the present suit.

3. Respondent No.1 in person Mr. Suresh Kumar Malhotra submits that the Trial Court has proceeded in accordance with law and despite being served and appearing through counsel Mr. Jayant Malik and seeking time to file the written statement, no such written statement was ever filed thereafter. The Trial Court has correctly examined the facts as obtained in the present case and therefore, this Court ought not to interfere in the impugned order.

4. After some arguments, the matter stood over yesterday and has been posted for today in view of the fact that the parties agreed to a consent order.

5. With the consent of the parties, the following directions are passed.

(i) The impugned order is modified to the extent that the petitioner is permitted to appear before the Court and written statement that has been filed before it is directed to be taken on record. Subject to payment of cost of Rs.75,000/- by the petitioner to Mr. Suresh Kumar Malhotra, the order of proceeding ex parte is set aside and the written statement is directed to be taken on record. The said amount be remitted to Mr. Suresh Kumar Malhotra, respondent No.1 by demand

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draft on or before 20.02.2023, the date before the learned Trial Court.

(ii) Mr. Suresh Kumar Malhotra, respondent herein is permitted to file replication to the same in the time as allowed by the learned Trial Court.

(iii) Learned counsel for the petitioner submits that an amount of Rs.5 Lacs was deposited before this Court in pursuance of the order dated 22.10.2019 and the said amount has been kept in the form of FDR. With consent, the said amount is directed to be remitted to the learned Trial Court *in seisin* of the suit bearing No. CS No. 1215/2017 pending before the learned Additional District Judge-01, South East, Saket Courts, New Delhi.

(iv) Upon receiving the said amount from this Court, the learned Trial Court is directed to invest the same in an FDR with an auto renewal clause to be released and disbursed to the party which is ultimately held to be entitled by it.

(v) Parties are directed to appear before the learned Trial Court on 20.02.2023, the date already fixed before it.

6. In view of above nothing further survives for adjudication, the petition is disposed of.

TUSHAR RAO GEDELA, J .

JANUARY 17, 2023/*ms*

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