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

Date of decision: 30.10.2023

+ CM(M) 1364/2018

SUNJAY AGGARWAL

..... Petitioner

Through: Mr. Shiv Charan and Mr. Imran
Khan, Advocates

versus

RAVI BHUSHAN & ANR

..... Respondents

Through: Mr. Ankit Jain and Ms. Tanisha
Gopal, Advocates

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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 order dated 26.07.2018 passed by ADJ-03, North West, Rohini Courts, Delhi ('Trial Court') in CS No. 57770/2016, dismissing the application filed by the Petitioner i.e., defendant under Order 9 Rule 7, Code of Civil Procedure, 1908 ('CPC') for seeking setting aside of the order dated 08.11.2017, whereby the Petitioner was proceeded ex parte.
2. The learned counsel for the Petitioner states that the Petitioner undertakes to this Court that there will be no further default in the representation of the Petitioner i.e., defendant before the Trial Court.
- 2.1 He states that Petitioner will conclude the cross examination of Plaintiff Witness-1 ('PW-1') within two (2) hearings.



2.2 He states that the Petitioner wishes to examine only one witness i.e., the defendant himself and no further evidence is proposed to be led.

2.3 He states that the non-appearance on 08.11.2017 was on account of the Petitioner's counsel being held up for cross-examination of a witness in another Court and the non-appearance was therefore, bona fide.

2.4 He states that the Petitioner is willing to pay legal costs to the Respondent to compensate for the delay caused. He states that the Petitioner shall remain bound by the statement made before this Court on 11.10.2023 as regards not pursuing the liberty granted for filing amended written statement.

2.5 He states that the costs of Rs. 20,000 imposed vide order dated 09.10.2017 have been paid over to the counsel for the Respondent during the course of the hearing.

3. In response, learned counsel for the Respondent states that the Petitioner has not offered a reasonable explanation for the non-appearance on 08.11.2017 and the subsequent non-appearance on 21.03.2018.

3.1 He concedes that the costs of Rs. 20,000 imposed vide order dated 09.10.2017, has been paid today during the course of hearing. He further states that the same has been paid over belatedly. He states that, therefore, no ground has been made out by the Petitioner for interfering with the order dated 26.07.2018.

3.2 He states that without prejudice, in the event, liberty is granted to defendant to cross examine PW-1, the Respondent herein reserves liberty to examine/summon further two (2) witnesses. He states that the affidavit by way of evidence of the said witnesses shall be filed prior to the commencement of the cross examination of PW-1, unless the said additional



witnesses are proposed to be summoned through Court process.

4. This Court has considered the submissions of the parties.

5. It is a matter of record that the possession of the suit property has already been handed over to the plaintiff and the admitted rent also stands paid. The issue pending before the learned Trial Court is determination of the rate of mesne profits which are liable to be paid by the Petitioner to the Respondent.

6. This Court has perused the record and is of the opinion that it would be in the interests of justice, if the Petitioner is permitted to cross examine the plaintiff's witnesses so that the said issue can be decided on merits so as to obviate delay.

7. Accordingly, the impugned orders dated 26.07.2018 and 08.11.2017 are set aside on the following terms:

7.1 The Petitioner shall remain bound to the statement and undertakings given to this Court as recorded hereinabove. The Petitioner will not seek any adjournment before the Court, will remain duly represented and conclude the cross examination of PW-1 and other witnesses on the dates fixed by the Trial Court.

7.2 The defendant shall lead evidence of only one (1) witness and file the affidavit by way of evidence within two (2) weeks after the plaintiff closes his evidence.

7.3 The Petitioner shall pay costs of Rs. 25,000 to the Respondent before the next date of hearing fixed before the Trial Court i.e., 13.12.2023.

7.4 The Respondent i.e., plaintiff will be at liberty to lead evidence of two (2) additional witnesses as prayed for.

8. It is made clear that if the Petitioner i.e., defendant is not represented



on any of the dates of hearing before the Trial Court his right to cross examine the plaintiff's witness shall stand closed and no further extension will be granted.

9. With the aforesaid directions, the present petition is disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 30, 2023/msh/sk

Click here to check corrigendum, if any