



\$~71

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

% *Date of decision: 05th August, 2024*

+ CM(M) 2873/2024

PRIYANKA AGGARWAL & ANR.

.....Petitioner

Through: Mr. Chandra Shekhar Yadav with Mr.
Pratiyu Kumar Yadav, Advocates.

versus

SHRI BANKEY BIHARI POLYPLAST

.....Respondent

Through: Mr. Rishi Sehgal with Ms. Neha
Sharma and Mr. Akash Bassi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 44482/2024(exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 2873/2024 & CM APPL. 44481/2024 (stay)

1. The main petition is otherwise listed for 20.11.2024.
2. In the interregnum, said application has been moved by the plaintiff seeking stay of the proceeding before the learned Trial Court on the premise that the case is already at the stage of evidence and if the case is disposed of by the learned Trial Court, the matter herein would become infructuous.
3. Learned counsel for the respondent/plaintiff is also present in Court and with the consent of both the parties, the main petition has been taken up today itself for final disposal.



4. I have seen the impugned order dated 03.06.2023 as well as order dated 18.04.2024.
5. Admittedly, petitioner is defending a commercial suit.
6. There is no dispute that the written statement had been filed by the defendants within the time granted by the learned Trial Court.
7. The controversy is respect to delayed filing of affidavit of admission/denial.
8. Admittedly, such affidavit of admission/denial of the documents was submitted belatedly and keeping in mind the reasons assigned by the defendants and taking note of the various other facts, the learned Trial Court dismissed the application moved by defendant under Order IX Rule 7 CPC and also, resultantly, refused to condone the delay in filing such affidavit of admission/denial.
9. The learned Trial Court came to the conclusion that the defendants had failed to show any sufficient and reasonable ground for not filing affidavit of admission/denial of the documents and also for his non-appearance.
10. Learned counsel for the respondent states that, in order to ensure that there is no further delay in his own suit and without prejudice to his rights and contentions, he would have no objection if such affidavit, which has been, albeit, filed belatedly, is deemed to be taken on record. However, he also submits that for causing delay in the matter, the petitioner herein should be burdened with exemplary cost and since the next date before the learned Local Commissioner for the purposes of recording of plaintiff's evidence is 07.08.2024, the defendants be asked to defend the matter in diligent matter and should make themselves available for cross-examination of witness of plaintiff.



11. Keeping in view of the peculiar factual matrix of the present case and also the gracious concession given by learned counsel for the respondent, the present petition is disposed of with the following directions:

- i. The *ex parte* order dated 03.06.2023 is set aside.
 - ii. The affidavit of admission/denial of documents submitted by the defendants, which is stated to have been filed on 19.07.2024, shall be deemed to be taken on record.
 - iii. For causing delay in the matter, defendants are burdened with cost of Rs. 20,000/- which shall be paid to the opposite side on 07.08.2024, when the matter is fixed before the learned Local Commissioner for the purposes of plaintiff's evidence.
 - iv. It is expected that defendant shall render full assistance and co-operation to the learned Trial Court as well as to the learned Local Commissioner and would not seek any unnecessary adjournment.
12. The next date stands cancelled.
13. The petition stands disposed of in terms of aforesaid directions.

(MANOJ JAIN)
JUDGE

AUGUST 5, 2024/sw