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

% ***Date of decision: 03rd July, 2024***

+ CM(M) 1896/2023, CAV 591/2023&CM APPL. 59356/2023

M/S DAYAL CHAND KISHORI LALPetitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Shekhar Kumar, Mr. Aditya Raj,
Ms. Archisha Satyarthi, Ms. Anju
Aggarwal, Advocates.

versus

MRS SWARAN MAKKAR

.....Respondent

Through: Mr. Sidharth Arora with Mr. Gaurav
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner happens to be defendant before the learned Trial Court.
2. Respondent-Mrs. Swaran Makkar filed a civil suit i.e. C.S.(OS) No. 2365/2014 seeking possession of the suit property, arrears of property tax, mesne profits etc.
3. The petitioner (defendant before the learned Trial Court) had earlier participated in the proceeding and filed a written statement as well on 17.12.2014. Issues were framed by learned Trial Court on 08.03.2017.
4. However, the defendant was preceded in ex-parte on 12.07.2022.
5. During the course of proceedings, the learned Trial Court heard the arguments on application moved under Order XXXIX Rule 10 read with Section 151 CPC and directing the defendant to pay rent/occupational charges at the admitted rate of Rs. 6655/- per month from the date of filing of the suit till the pendency of the suit and the arrears of rent, if already not paid, were directed to be deposited in the Court within one month.



6. Though, the defendant was ex-parte and the aforesaid application was disposed of by the learned Trial Court in the favour of the plaintiff, the plaintiff was still aggrieved as the learned Trial Court had merely directed for payment/deposit of rent as per the admitted rate of rent.

7. Accordingly, the plaintiff had filed FAO No. 07/2023 before this Court by invoking Order XLIII Rule 1 of CPC. After hearing both the parties, the Co-ordinate Bench of this Court modified the aforesaid order. The relevant direction contained in said order dated 16.03.2023 is reproduced as under:

“14. Considering the aforesaid and the material on record, this Court is of the opinion that interest of justice would be served if the respondent/defendant is directed to deposit before the Trial Court arrears @ Rs.2 lacs per month since the date of filing of the suit till its pendency. Therefore, the present appeal is allowed and it is ordered accordingly. The arrears upto the date of passing of this judgment be deposited with the Trial Court within a period of six months from today. For the period beginning 16.03.2023, the deposit at the aforesaid rate shall be made month by month, in advance, by the 7th of every month. The amount to be deposited by the respondent/defendant shall be kept in an interest bearing deposit and its release shall be subject to the final outcome of the suit. Pending application stands disposed of.”

8. It is not in dispute that before the aforesaid order dated 16.03.2023, the plaintiff had already filed one application under Order XV-A read with Section 151 CPC before the learned Trial Court for non-compliance of order dated 01.10.2022.

9. Such application was eventually decided by the learned Trial Court on 07.10.2023.

10. By virtue of said order, the defence of the defendant has been struck off for the reason that the deposit was not made in time. Learned Trial Court also noticed that there was a delay of one day but did not condone the delay, observing that the order to pay rent was passed by a superior Court and thus it



seemed to have presumed that it lacked power to extend the date of deposition of the arrears of rent beyond what had been fixed by the High Court.

11. Such order has now been assailed on multiple grounds.

12. It has been contended that as per the mandatory provision contained under Order XV-A CPC, no show-cause notice was ever issued by the trial court. Reliance has been placed on order dated 26.04.2022 passed by coordinate Bench of this court in *CM(M) 278/2020 Rashi Mishra Vs. B Kalyana Raman*. Secondly, the court had proceeded on the application which has been moved way back on 09.12.2022 and since, there was a change in the circumstances by virtue of the order passed by this Court on 16.03.2023, it was imperative on the part of the plaintiff to have moved application afresh. The earlier application had become stale and could not have been dealt with at all.

13. Arguments have been heard from both the sides.

14. During course of arguments, learned counsel for the plaintiff has, very fairly, stated that he would have no objection if the defendant is permitted to participate in the proceedings and is also permitted to lead defence. He submits that, as on date, a sum of Rs.2.5 crores approximately has been secured by the petitioner herein by way of submitting FDRs in the name of Court. He also submits that as per the instructions, which he has received from his client, the defendant has already moved an application under Order IX Rule 7 CPC as well as application under Order XVIII Rule 17 CPC and since the plaintiff, who is in his nineties, does not want to cause any further delay in his suit, he would not even object if such applications are also allowed by the learned Trial Court.

15. Keeping in mind the peculiar factual matrix, the statutory provision,



legal position and particularly, the concession given by the learned counsel for the plaintiff, the order dated 07.10.2023 is hereby set aside. As a necessary corollary, defendant would be permitted to lead his defence before the learned Trial Court.

16. Both the sides are not averse to the idea if the learned Trial Court is requested to dispose of the matter in time-bound manner.

17. It is apprised that the plaintiff has already led evidence and the case would now be required to be fixed for defendant's evidence.

18. Therefore, the learned Trial Court is requested to expedite the disposal of the matter, preferably within five months from today.

19. Needless to say, that both the sides would render due cooperation to the learned Trial Court so that the learned Trial Court is in a position to dispose of the matter. It is expected that no party would seek any unnecessary adjournment from the Court.

20. The defendants are directed to submit the list of witnesses, if not already submitted, on or before the next date of hearing i.e. 21.07.2024 with advance copy to the other side. Learned Trial Court shall also, in view of the discussion made herein above and the concession given by the Respondent/plaintiff, take up and dispose of the above two applications i.e. application moved under Order IX Rule 7 CPC and application under Order XVIII Rule 17 CPC by the petitioner herein.

21. Order *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 03, 2024/sw