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

+ **CM(M) 327/2025**

RAJEEV

.....Petitioner

Through: Mr. Maroof Ahmad and Mr. Anil
Vyas, Advocates.

versus

ASHUTOSH CHAND KAUSHIK

.....Respondent

Through: Mr. Rhythm Shed Shrivastav and Mr.
Pankaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **24.02.2025**

CM APPL. 9513/2025 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 327/2025 & CM APPL. 9512/2025 (stay)

1. Petitioner impugns orders dated 30.01.2025 and 24.05.2024 passed in CS No. 889/2023, titled as, "Ashutosh Chand Kaushik vs. Rajeev".
2. Shorn off unnecessary details, the relevant facts are that respondent filed a suit for recovery of possession, arrears of rent, mesne profits and permanent injunction against the petitioner.
3. Summons of suit were served to petitioner's wife on 01.09.2023. Petitioner did not appear before the Court pursuant to the service of summons to petitioner's wife.
4. On 09.03.2024, petitioner filed written statement along with



application for condonation of delay. The application was dismissed and written statement was not allowed to be taken on record by the trial Court vide impugned order dated 24.05.2024.

5. Petitioner was proceeded ex parte on 27.09.2024. The application filed by the petitioner for setting aside the ex parte order was dismissed by the trial Court vide impugned order dated 30.01.2025.

6. Learned counsel for petitioner submits that wife of the petitioner is illiterate and she did not inform the petitioner of receipt of summons and petitioner came to know about it for the first time after he was served notice of preponement application, filed by the respondent. Immediately thereafter, petitioner engaged a counsel and got the written statement prepared and filed the same before the Court with five days' delay.

7. Learned counsel further submits that counsel, who was engaged did not inform of the next hearing date to the petitioner which resulted in default in appearance on 27.09.2024 and 19.10.2024. It is, thus, submitted that petitioner's absence was neither deliberate not intentional but because of negligence of previous counsel.

8. Per contra, learned counsel for respondent submits that there is inordinate delay on the part of the petitioner. He submits that petitioner neither appeared not filed the written statement within the stipulated time period and was also negligent thereafter by not appearing before the Court, and therefore, the learned trial Court has rightly refused to take his written statement on record and dismissed his application under Order IX Rule 7 CPC.

9. However, without prejudice to the aforesaid submissions, learned counsel for respondent fairly states that in order to curtail any further delay,



respondent has no objection in case the written statement already filed before the trial Court is taken on record and ex parte order be set aside subject to imposition of heavy cost.

10. Even though the record reveals that petitioner had been negligent in the matter of filing the written statement as also in appearing before the Court, the Court is of the view that lis between the parties should be decided on merits. Hence, keeping in view the entire facts and circumstances, as also the concession granted by learned counsel appearing for the respondent, petition is allowed and orders dated 30.01.2025 and 24.05.2024 are set aside with direction to the trial Court to take the written statement already filed, on record subject to cost of Rs. 20,000/-. Petitioner is directed to make the payment of cost to the respondent before the trial Court on the date fixed i.e. 29.04.2025.

11. It is made clear that petitioner shall not be granted any further adjournment for the purpose of making the payment of cost. The trial Court is also directed to ensure that no unnecessary adjournments be granted so that trial may be expedited.

RAVINDER DUDEJA, J

FEBRUARY 24, 2025/vd /ia