



2025:DHC:7802



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

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*Date of Decision: 08.09.2025*

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**CM(M) 1409/2025, CM APPL. 46425/2025 & 46426/2025**

SUNIL KUMAR

.....Petitioner

Through: Mr. Dinesh Chand Meena, Advocate

versus

GIRDHARI LAL SHARMA

.....Respondent

Through: Mr. Sandeep Mishra, Advocate with  
respondent in person**CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T (ORAL)**

1. Petitioner (*defendant in the suit*) has assailed order dated 05.05.2025 of the learned trial court, whereby application of the petitioner to take on record Written Statement was dismissed, and his another application under Order XVIII Rule 17 CPC also was dismissed.

2. It is explained by learned counsel for petitioner that the Written Statement filed belatedly was allowed to be taken on record subject to payment of cost, but since the cost was not paid, the Written Statement was taken off the record. Further, since on the date fixed for plaintiff's evidence, learned counsel for defendant (*present petitioner*) could not appear, right to cross examine PW1 was closed. Learned counsel for petitioner submits that



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the default on the said occasion was due to his personal difficulty. As regards non-payment of cost regarding condonation of delay in filing the Written Statement, it is submitted by learned counsel for petitioner that on 22.05.2024 a quarrel took place between defendant and few others, which even led to registration of FIR No. 472/2024 of PS Paschim Vihar (West), so the defendant was confined to bed rest and could not appear in court on 29.05.2024 to pay cost. As regards closure of right to cross examine, it is contended by learned counsel for petitioner that “due to reasons beyond control of the defendant”, the cross examination could not be carried out.

3. Learned counsel for respondent appearing on advance intimation accepts notice and strongly objects to this petition, disclosing that the petitioner, as tenant under the respondent is already neck deep into arrears of rent to the tune of Rs.14,00,000/- approximately and only wants to protract the trial of this tenancy suit.

4. In response to a specific query, learned counsel for petitioner submits that the defence sought to be set up by him before the trial court is that the petitioner had paid a sum of Rs.15,00,000/- towards *pugree* to the earlier owner of the subject property. But admittedly, the suit is based on a registered rent agreement executed between the parties, which agreement is completely silent about any such money paid by the petitioner to the predecessor of the respondent. Further, such defence, even if permissible to be raised, would be only a monetary issue, not a justification to retain



possession of the tenanted premises. That being so, I am in agreement with learned counsel for respondent that even if the present petition is allowed, the only impact it would have is protraction of the trial proceedings.

5. Coming to the issues of taking the Written Statement off the record and closing of the right to cross examine plaintiff, the learned trial court has narrated the previous relevant proceedings in the impugned order, correctness whereof is not in dispute.

6. According to the trial court record, traversed through in the impugned order, initially the petitioner was proceeded *ex-parte* on 12.07.2023, after which his application for setting aside the *ex-parte* was allowed; and vide order dated 14.03.2024, delay in filing Written Statement was condoned subject to cost of Rs.5,000/-, posting the matter to 05.04.2024. On 05.04.2024 cost was not paid, so the matter was adjourned to 29.05.2024 but even on that date, cost was not paid so Written Statement was taken off the record. There is not even a whisper explaining as to why the cost imposed on 14.03.2024 was not paid on 05.04.2024 and as to why the same was not sent by 29.05.2024 through counsel even if the petitioner had got injured. In any case, no medical record of the alleged injuries was placed on record by the petitioner. The above narration of circumstances clearly shows that the petitioner simply wanted to protract the trial proceedings, so the learned trial court fairly took the Written Statement off the record.



7. As regards closure of right to cross examine, admittedly it is not a case where the trial court closed the right to cross examine mistakenly for the reason that the Written Statement was taken off the record. It is trite that even if Written Statement is not on record, cross examination opportunity cannot be denied to the defendant, though in the cross examination, the defendant would not suggest the defence. In the present case, as observed by the learned trial court, the matter was listed for plaintiff's evidence on 21.08.2024 but none appeared for the defendant, so the matter was adjourned by the trial court to 06.11.2024. But even on 06.11.2024, none appeared for the defendant, so the learned trial court closed the testimony of plaintiff/PW1. As mentioned above, in the application under Order XVIII Rule 17 CPC, the defendant vaguely averred that due to reasons beyond control of the defendant, he could not appear on the day fixed for cross examination of the plaintiff. There having been no specific reason extended for the default, the learned trial court correctly closed the cross examination and subsequently dismissed the application by way of the impugned order.

8. In nutshell: there is no reasonable explanation for the petitioner having not paid cost despite repeated opportunities for condonation of delay in filing the Written Statement even after the *ex-parte* was set aside; there is no explanation at all as regards failure of the counsel for petitioner to cross examine the respondent despite repeated opportunities; and even the defence sought to be set up before the trial court would lead only to protracting the proceedings.



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9. Considering the aforesaid, I find no merit in the present petition. Therefore, the petition and the accompanying applications are dismissed.

**GIRISH KATHPALIA  
(JUDGE)**

**SEPTEMBER 08, 2025/as**