



2025:DHC:3138



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 30th April, 2025*

+ CM(M) 475/2025, CM APPL. 14697/2025 & 14698/2025

PRINCE KHAN

.....Petitioner

Through: Mr. S.H. Ansari, Advocate.

versus

PAWAN KUMAR

.....Respondent

Through: Mr. Diwanshu Thakur, Advocate
along with respondent in person.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The situation in the present petition is little unusual.
2. The petitioner herein is defending a suit for possession, injunction and arrears of rent etc.
3. The suit was earlier filed as an ordinary suit. It seems that the plaintiff moved an application seeking return of such suit and once his application was allowed and the plaint was returned, the suit was instituted before a Commercial Court.
4. It was taken up by the learned Commercial Court on 30.01.2024 and summons were issued.
5. Admittedly, defendant was served with summons afresh on 22.02.2024.
6. Fact, however, remains that when the suit was being pursued as an ordinary suit, the same defendant had already participated therein and had,



apparently, filed written statement.

7. Based on such written statement, which had been filed by the defendant before the previous Court, the plaintiff moved an application under Order XII Rule 6 CPC before the Learned Commercial Court and such application was taken up by the learned Court on 08.05.2024. Relying on certain admissions made in the abovesaid written statement, the petitioner herein suffered an admission decree and was directed to hand over the possession of the suit property.

8. Admittedly, such possession has already, now, been received back by the plaintiff.

9. Since the suit had been re-instituted before the learned Commercial Court, a subsequent filed written statement of the defendant was considered on 19.09.2024 and the learned Commercial Court has refused to take such written statement on record, being barred by time.

10. Such order is under challenge.

11. The impugned order would also reflect that the defendant had even tried to file written statement afresh on 08.04.2024 as well but it was taken back as it was not in accordance with the provision of Commercial Courts Act.

12. There is, unfortunately, a paradox herein.

13. On one hand, relying on the admission appearing in the written statement filed by the defendant, the learned Trial Court has passed a decree against him and on the other hand, the written statement has been refused to be taken on record. If the written statement was not, formally, on record, there was no reason, whatsoever, for the learned Commercial Court to have acted upon the same and to have passed an admission decree, based on averments



appearing in such written statement. The previously filed written statement was redundant, unless the suit had been restored under Order 7 Rule 10 A CPC. It does not seem to be a case, here. If the learned Commercial Court had chosen to act upon such previous written statement, it should not have sought for written statement, afresh.

14. However, during the course of arguments when asked, learned counsel for both the sides submit that they want to further proceed with the matter. Learned counsel for the petitioner/defendant submits that he is not challenging the abovesaid admission-decree and does not even seek restoration of the tenanted premises. He, simply submits that his written statement may be assumed to be on record and he may be given an opportunity to defend the suit.

15. Mr. Diwanshu Thakur, learned counsel for respondent/plaintiff also submits that he has taken requisite instructions from the plaintiff who is also present in Court and submits that they would have no objection if, while taking the written statement on record, the defence of the defendant is also restored.

16. It is noticed that issues have already been framed by the learned Commercial Court on 19.09.2024 and in view of the abovesaid statements made by the learned counsel for the parties and the fact that the previous written statement has already been acted upon, to the detriment of the defendant, the present petition is disposed of with direction that the defence of the defendant stands restored and the written statement filed by him before the learned Commercial Court is also directed to be taken on record.

17. Learned Trial Court would, accordingly, proceed further with the matter, in accordance with law and would make best endeavour to dispose of



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the suit, as expeditiously as possible.

18. Petition stands disposed of in aforesaid terms.

19. A copy of this order be given *dasti*, under the signatures of Court Master.

(MANOJ JAIN)
JUDGE

APRIL 30, 2025/ss/js