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

*Date of decision: 23.05.2025*

+ FAO(OS) 64/2025  
SHER SINGH

.....Appellant

Through: Mr.Malaya Kumar Chand, Adv.

versus

THE CHAIRMAN, NDMC

.....Respondent

Through: Mr.Harsh Peechava, SC,  
Mrs.Ankita Savangi, ASC,  
Mr.Akshat, Mr.Akshilesh Loya,  
Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**NAVIN CHAWLA, J. (ORAL)**

**CM APPL. 32200/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

**FAO(OS) 64/2025 & CM APPL. 32201/2025, 32202/2025**

2. This appeal has been filed by the appellant, challenging the Order dated 04.09.2024 passed by the learned Single Judge of this Court in CS(OS) 301/2023, titled *Sher Singh v. The Chairman NDMC*, directing the appellant herein, who is the plaintiff in the suit, to file the list of witnesses within a period of four weeks, and further clarifying that even though the written statement of the respondent is not on record, the respondent shall be entitled to cross-examine the appellant's witness on legal issue, in accordance with law.

3. The appellant is aggrieved by the aforesaid order and contends



that once the opportunity to file the written statement was closed for the respondent, a decree in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908, should be passed in favour of the appellant.

4. We are unable to agree with the learned counsel for the appellant.

5. The abovementioned suit has been filed by the appellant praying for damages allegedly suffered by him on account of the termination of his service and subsequent reinstatement. Such damages are required to be proved in law and cannot be granted merely on the basis of the averments in the plaint.

6. In our view, the learned Single Judge has rightly directed the appellant to file his evidence and granted to the respondent an opportunity to cross-examine the witnesses of the appellant on legal issues, as may be permissible in law.

7. In *Asma Lateef & Anr. v. Shabbir Ahmad & Ors.* (2024) 4 SCC 696, the Supreme Court explained the principles applicable to exercise of jurisdiction under Order VIII Rule 10 of the CPC by a Court, as under:

*“26. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb “shall” in Rule 10 (although substituted for the verb “may” by the Amendment Act, 1976) does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a*



written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which “shall” equally applies would be rendered otiose.

27. At this stage, we consider it apposite to take a quick look at *Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396]* to examine the scope of Order 8 Rule 10. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Order 8 Rule 10CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement. The relevant paragraphs of the judgment are reproduced below for convenience :

“29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to





*such admission. Similar is the position with Section 58 of the Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.”*

8. Applying the above principles to the facts of the present case, we find no infirmity in the exercise of discretion by the learned Single Judge, vested in it by Order VIII Rule 10 of the CPC. As noted hereinabove, the appellant is claiming damage from the respondent. Damages, therefore, have to be proved in law by adducing evidence.

9. We also find that no sufficient reasons have been shown by the appellant for the delay of 169 days in filing the appeal.

10. Accordingly, finding no merits in the present appeal, the same is dismissed both, on the grounds of delay as well as on merits. The pending applications are also disposed of being infructuous.

**NAVIN CHAWLA, J**

**RENU BHATNAGAR, J**

**MAY 23, 2025/Arya/DG**

[Click here to check corrigendum, if any](#)