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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 989/2022, CM APPL. 41212/2022 (Stay) and CM
APPL. 41213/2022 (Exemption)

NARENDER KUMAR JAIN Petitioner
Through: Mr. Atul Gupta, Adv.

versus

PAWAN KUMAR JAIN Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
28.09.2022

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1. By order dated 29th March 2022, two applications, filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), in Suit 17832/2016 (***Pawan Kumar Jain v. Narender Kumar Jain***), were dismissed by the learned Additional District Judge ("the learned ADJ"), with costs of ₹ 25,000/- in each case, totalling to ₹ 50,000/-.

2. The petitioner applied for waiver of the costs. The request was rejected by the learned ADJ *vide* order dated 3rd August 2022 and the application was dismissed. The order also cautioned the petitioner that, in the event of failure, on the part of the petitioner, to pay costs as directed to the respondent on the next date of hearing, further participation of the petitioner in the proceedings would not be permitted.



2023-0416-2482

3. On 7th September 2022, the petitioner brought two cheques towards payment of the aforesaid costs. The respondent refused to receive the cheques. The learned ADJ has faulted the petitioner for having brought the costs by way of cheques and opined that the costs ought to have been paid by cash or demand draft. On this sole ground, the petitioner has been held not to be diligent regarding payment of costs and the defence of the petitioner, as the defendant in the suit, has been struck off.

4. *Prima facie*, this view is not acceptable in law.

5. There was no earlier direction directing payment of costs by cash or demand draft. *Prima facie*, the impugned order is, therefore, liable to be set aside.

6. However, there is no appearance on behalf of the respondent. Issue notice, returnable on 16th March 2023.

7. Notice be served on the respondent by all modes including *dasti* as well as through learned Counsel who appears on behalf of the respondent before the learned ADJ, if any.

8. Reply, if any, be filed within four weeks, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, within four weeks thereof.



9. Till the next date of hearing, there shall be a stay of further proceedings in the Suit 17832/2016 (***Pawan Kumar Jain v. Narender Kumar Jain***).

10. At this juncture, Mr. Atul Gupta, learned Counsel for the petitioner, points out that the orders rejecting the petitioner's applications under Order VII Rule 11 of the CPC are under challenge and the challenge is pending before this Court. Submission is noted.

C. HARI SHANKAR, J

SEPTEMBER 28, 2022
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