



2026:DHC:7058



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 27.07.2026**Date of Decision: 24.08.2026*# **CNR No. DLHC010200142026**+ **CM(M) 1057/2026 & CM APPL. 30741/2026****KABIR SARDAR**

.....Petitioner

Through: Mr. Aman Alam, Mr. Shashwat
Kumar and Mr. Abhishek Singh
Rana, Advs.

versus

MADAN LAL

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AJAY DIGPAUL****J U D G M E N T**

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1. The petitioner/defendant, by way of the present petition, has assailed orders dated 30.05.2025 and 06.04.2026 passed by the learned District Judge (Commercial Court-10), Tiz Hazari Courts, Delhi¹, in C.S. (COMM.) No. 814/2024 titled as '*Madan Lal v. Kabir Sardar*'. By way of order dated 30.05.2025, the learned Trial Court struck off petitioner's defence and his written statement was treated off the record. By way of the order dated 06.04.2026, application of petitioner under Order XLVII Rule 1 read with

¹ Hereinafter "Trial Court"



Section 151 Civil Procedure Code, 1908², seeking review of the order dated 30.05.2025, was dismissed.

2. Broadly speaking, the underlying dispute arises out of a suit for recovery, being CS(COMM) No. 814/2024, instituted by the respondent/plaintiff on 27.07.2024, seeking recovery of a sum of Rs. 14,33,873/-, along with interest. Whereupon, summons were issued to the petitioner on 27.07.2024 itself.

3. The timeline of events, as elucidated from the record, reflects that the petitioner was served with the summons on 20.08.2024. Learned counsel for the petitioner entered appearance on 23.09.2024 and sought time to file the written statement. The written statement was thereafter physically filed on 06.11.2024, which is alleged to be within the statutory outer limit of 120 days reckoned from the date of service of summons.

4. On 08.11.2024, the learned Trial Court noted certain procedural defects in the written statement, particularly with regard to the absence of signatures and defects in the Statement of truth, and accordingly granted the petitioner an opportunity to rectify the said defects, subject to payment of costs of Rs. 2,500/- to the respondent.

5. Thereafter, on 20.12.2024, the petitioner filed a corrected written statement. Learned counsel appearing for the respondent objected to the same on the ground that it was not accompanied by an application seeking condonation of delay. Consequently, learned counsel for the petitioner sought time to place the requisite application on record.

² Hereinafter "CPC"



6. The learned Trial Court, *vide* order dated 28.02.2025, recorded that the aforesaid costs had been paid and allowed the petitioner's application under Order VII Rule 1 CPC. It was further observed that the written statement had ultimately been filed within the outer limit of 120 days, albeit with curable procedural defects. The written statement was accordingly taken on record, subject to further costs of Rs. 2,000/- to the respondent.
7. The said costs remained unpaid. Consequently, on 27.03.2025, the learned Trial Court, referring to Section 35A CPC, directed that the defence could not proceed without payment thereof and imposed a further cost of Rs. 2,000/- upon learned counsel for the petitioner for seeking an adjournment. Though, on 05.05.2025, learned counsel for the petitioner undertook to make payment of the outstanding costs on the same day, the same remained unpaid.
8. *Vide* the order impugned dated 30.05.2025, the learned Trial Court, finding the explanation of "server error" for non-payment of costs untenable, struck off the petitioner's defence and took the written statement off the record. The respondent's evidence was thereafter recorded and closed on 18.09.2025, and the matter was fixed for final arguments.
9. The petitioner's subsequent application under Section 151 CPC, seeking permission to deposit the outstanding costs and contest the matter on merits, was dismissed on 11.12.2025 with costs of Rs. 1,000/-. The petitioner was, however, permitted to address arguments on the merits at the stage of final arguments.
10. The petitioner thereafter filed an application under Order XLVII Rule 1 read with Section 151 CPC seeking review of the orders dated 30.05.2025



and 11.12.2025, accompanied by an application under Section 5 of the Limitation Act.

11. The said review application was dismissed *vide* the impugned order dated 06.04.2026. The learned Trial Court found that the application disclosed neither a prayer clause nor any error apparent on the face of the record, and further observed that the petitioner had remained negligent despite the availability of video-conferencing. The application, having been filed when the case reached at the stage of final arguments, was also found to be *prima facie* dilatory. A further cost of Rs. 5,000/- was consequently imposed upon the petitioner and the matter was directed to be listed for final arguments.

12. It is in these circumstances that the petitioner has approached this Court.

13. Mr. Aman Alam, learned counsel appearing on behalf of the petitioner submits that the petitioner had duly transferred Rs. 2,000/-, Rs.3,000/- and Rs.2,500/-, on 28.02.2025, 10.03.2025 and 05.05.2025 respectively, to one, Mr. Dubey, the counsel who was representing him before the learned Trial Court, towards payment of the costs imposed. It is further submitted that upon subsequently becoming aware of the conduct of the said counsel, the petitioner directly transferred the sum of Rs. 5,000/- to the respondent on 22.04.2026, in compliance with the order dated 06.04.2026.

14. Learned counsel submits that the petitioner made the aforesaid payments in the *bona fide* belief that the same would be duly deposited towards the costs imposed by the learned Trial Court and that the petitioner, being a layperson unfamiliar with court procedures, ought not to be prejudiced on account of the default or negligence of his counsel. Reliance is



placed on *Rafiq v. Munshila*³, and *Dwarika Prasad (Deceased) through LRs v. Prithvi Raj Singh*⁴, wherein the Hon'ble Supreme Court reiterated that a party ought not to be made to suffer for the negligence or default of counsel and that matters should, as far as possible, be adjudicated on merits rather than being shut out on technicalities.

15. It is further submitted that striking off petitioner's defense has caused serious prejudice, as the petitioner has thereby been deprived of an opportunity to contest, on merits, the respondent's claim for recovery of approximately Rs. 14 lakhs. Learned counsel accordingly prays that the impugned orders be set aside and the petitioner's defense be restored.

16. *Per contra*, the stand of the respondent before the learned Trial Court was that the petitioner's review application dated 09.02.2026 admits, in paragraph 4, that the costs were remitted to his own erstwhile counsel and never reached the respondent, despite specific directions of the learned Trial Court. It is submitted that such repeated failure reflects a dilatory tactic rather than a *bona fide* lapse on petitioner's behalf, and allowing the restoration of petitioner's defence at the stage of final arguments would unsettle a trial which has otherwise attained finality.

17. Heard. Perused the records.

18. The question which arises for consideration is whether, in the facts and circumstances of the present case, the petitioner ought to be deprived of his defence on account of non-payment of the costs imposed by the learned Trial Court. It is trite law, that ordinarily, failure to comply with an order directing payment of costs may entail closure of the right of the defaulting

³ 1981 SCC (2) 788

⁴ 2024 INSC 1030



party to prosecute or defend the proceedings. The Hon'ble Supreme Court has reiterated time and again that such consequence is not to be applied mechanically where the circumstances on record disclose a *bona fide* explanation for the default and the lapse is capable of being cured without causing irreparable prejudice to the opposite party.

19. In the present case, from perusal of the annexures to this petition, it becomes evident that the petitioner did make payments towards the costs on 28.02.2025, 10.03.2025 and 05.05.2025, albeit to his erstwhile counsel. The payments, taken cumulatively, were not insignificant and, in fact, exceeded the costs then payable to the respondent. While the manner in which the petitioner's counsel sought to explain the non-payment before the learned Trial Court as being occasioned by a "server-error" does not fully reconcile with the subsequent explanation furnished in the review proceedings, the fact remains that the petitioner had taken steps to arrange and transfer the requisite amounts towards the costs.

20. His subsequent payment of Rs. 5,000/- directly to the respondent also lends support to his contention that the default was not intended to delay the proceedings or evade compliance with the orders of the learned Trial Court.

21. It becomes material to note that the default in question relates only to payment of costs. It does not arise from any failure to file the written statement within the prescribed period. The learned Trial Court had already taken the written statement on record, having found that the same was filed within the outer limit of 120 days, subject to payment of costs. The consequence of striking off the defence, therefore, operated to deprive the petitioner of an opportunity to contest the respondent's claim on merits for what essentially remained a curable procedural default.



22. The reference to Section 35A CPC in the order dated 27.03.2025 also warrants notice. Section 35A CPC contemplates compensatory costs upon a finding that a claim or defence is false or vexatious. No such finding is discernible in the present case. The costs in question, being imposed in the context of delay in compliance with the directions of the Court, were, in substance, governed by Section 35B CPC. The latter provision does contemplate withholding of further proceedings by the defaulting party until payment of costs, however, the provision cannot be construed as mandating an irreversible forfeiture of the defence in circumstances where the default is subsequently satisfactorily cured and no prejudice incapable of compensation is caused to the opposite party.

23. This Court is conscious that the review application filed by the petitioner did not disclose any error apparent on the face, but the supervisory jurisdiction of this Court is being invoked against the cumulative effect of the orders dated 30.05.2025 and 06.04.2026, and this Court is required to examine whether, in the peculiar facts of the case, the ultimate consequence of striking off the defence is proportionate to the default committed.

24. Having regard to the facts that the written statement was filed within the statutory period, the petitioner had made payments towards the costs, the default was attributable to his reliance upon his erstwhile counsel, and the petitioner has subsequently tendered the costs directly to the respondent, this Court is of the view that the extreme consequence of permanently shutting out the defence would cause disproportionate prejudice to the petitioner. At the same time, the petitioner cannot be permitted to derive an unconditional benefit from his repeated defaults. The restoration of the defence must,



therefore, be made subject to appropriate terms so as to balance the interests of both parties and compensate the respondent for the inconvenience caused.

25. Accordingly, the orders dated 30.05.2025 and 06.04.2026 are set aside. The amount of Rs. 5,000/- paid by the petitioner directly to the respondent pursuant to the order dated 06.04.2026 shall be adjusted towards the costs imposed *vide* orders dated 28.02.2025 and 27.03.2025. The learned Trial Court is directed to take the written statement of the petitioner on record, subject to the petitioner paying further costs of Rs. 10,000/- to the respondent within a period of one week from today. The petitioner shall also be at liberty to seek recall of PW-1 for the purposes of cross-examination, which request shall be allowed by the learned Trial Court as the last and final opportunity to the petitioner.

26. The learned Trial Court is further directed to dispose of the matter as expeditiously as possible, preferably within six months from today, according to the exigencies of its board.

27. The present petition is accordingly disposed of in the above terms. Pending application(s), if any, also stand disposed of.

28. Needless to clarify that nothing observed herein shall be construed as an expression on the merits of the present case.

29. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J

AUGUST 24, 2026/AS/os/dd