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

+ **FAO 136/2015 and CM No.7460/2015 (stay)**

SHAKUNTALA DEVI & ORS Appellants

Through: Mr. Ajaypal Singh, Advocate

versus

BANSINDHAR SHAH & ORS Respondents

Through: Mr. Sudhir Nayar and Mr. Manohar
Nayar, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **16.10.2015**

1. This is an appeal filed by the appellants / plaintiffs against order dated 04.03.2015, whereby their application under Order 9 Rule 9 of the CPC was dismissed.

2. To be noted, prior to that date, the appellants' / plaintiffs' suit was dismissed by the trial court for non-prosecution vide order dated 27.01.2014. While dismissing the suit, the trial court also made the following observations in the order dated 27.01.2014 :-

“..Plaintiff is debarred from prosecuting the case any further u/o. 35 (1)(a) of CPC in the 2nd portion before explanation...”

3. I have perused the trial court record. The trial court record shows that vide order dated 21.10.2013, costs of Rs.3,000/- had been imposed on the appellants / plaintiffs on account of the fact that there

was no representation on their behalf on that date and on a date prior to 21.10.2013.

3.1 The record also shows that on 07.11.2012, costs of Rs.2,000/- had been imposed on respondent no.1 to 3 / defendant no.1 to 3 by the trial court.

3.2 The learned counsel for the appellants / plaintiffs says that the reason their lawyer could not attend the court proceedings on 27.01.2014, was that, this court, had fixed a matter on the very same date at 2.30 p.m. For this purpose, the learned counsel for the appellants / plaintiffs has drawn my attention to orders dated 22.01.2014 and 27.01.2014 passed in WP(C) 487/2014. The order-sheets for those dates show the presence of Mr. Gurmit Singh Hans for the petitioners in that case. I am informed that Mr. Gurmit Singh Hans also represented the appellants / plaintiffs in the court below.

4. The record shows that both parties have been lackadaisical in proceeding with the matter, in the trial court. It is because of this, that the trial court, has imposed costs on both the appellants/ plaintiffs as well as the respondents/ defendants.

5. The learned counsel for the parties say that they are contrite, and that, they would ensure that the proceedings are taken up vigorously in the trial court.

6. Based on this assurance, orders dated 04.03.2015 and 27.01.2014, are set aside. The trial court will take up the proceedings from the stage at which it is presently positioned. The parties and their counsels shall appear before the trial court on 20.11.2015. The Registry, will despatch a copy of this order to the trial court.

7. Furthermore, the Registry will also despatch the record to the trial court. The trial court will ensure that costs are paid by the parties as indicated in its orders, referred to above.

8. The appeal and the pending application are disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

OCTOBER 16, 2015

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