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

+ RFA 67/2014 & CM No.3582/2014 (for stay)

M/S APRAJIT IMPEX PVT. LTD.

..... Appellant

Through: Mr. A.K. Singla, Sr. Adv. with Mr.
Abhimanyu, Adv.

Versus

M/S REALTIME SYSTEMS PVT LTD & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.03.2016

1. The appeal impugns the judgment and decree dated 5th December, 2013 of the court of Ms. Anju Bajaj Chandna, Additional District Judge (Central)-01, Tis Hazari Courts, Delhi of dismissal of the suit being Civil Suit No.448/2009 bearing Unique ID No.02401C1194612008 for recovery of money filed by the appellant / plaintiff.

2. The suit was originally filed under Order XXXVII of the Code of Civil Procedure, 1908. Only the respondents no.1 & 3 (Sh. Hemant chadha) applied for leave to defend and which was refused and the suit decreed. However on the respondents no.1 & 3 appealing to this Court, vide consent order, leave to defend was granted to the respondents no.1 & 3 subject to their depositing a sum of Rs.8,00,000/- in the Trial Court and which was ordered to be released to the appellant / plaintiff unconditionally.

3. On remand also, only the respondents no.1 and 3 contested the suit and the respondent no.2 (Sh. Akhilesh Khare) was *ex parte* before the Trial Court.

4. The respondents no.1 & 3 also though filed the written statement but thereafter stopped appearing and the appellant / plaintiff led *ex parte* evidence.
5. However the Trial Court as aforesaid dismissed the suit and has directed the appellant / plaintiff to refund the sum of Rs.8,00,000/- to the respondents.
6. Notice of this appeal was issued to the respondents and was ultimately ordered to be served by publication and none of the respondents appeared and were proceeded against *ex parte* on 14th July, 2015.
7. Appeal was taken up today for hearing but it is found that the Trial Court record requisitioned in this Court is not complete; neither the plaint nor the documents on which the appellant / plaintiff in its *ex parte* evidence purported to put exhibit marks are found therein.
8. Rather than adjourning the matter to await the requisitioning of the balance trial court record, it is felt that since none is coming forward to take back the amount of Rs.8,00,000/- received by the appellant / plaintiff as aforesaid, this Court should not waste its time on a useless exercise.
9. The appeal is disposed of with liberty to the appellant / plaintiff to apply for revival if the respondents within limitation seek recovery of the amount of Rs.8,00,000/- so received by the appellant.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 14, 2016

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