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

+ C.R.P. 118/2016& CM Nos.28720-28721/2016

M/S S R FOILS AND TISSUES LTD Petitioner
Through Mr.Kshitij Bhardwaj and Mr.Ashok
Kumar, Advs.

versus

M/S PRINT AND DIGITAL INDIA PVT LTD..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
09.08.2016

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CM No.28720/2016

Exemption allowed, subject to all just exceptions.

CM No.28721/2016

For the reasons stated in the application, the delay in re-filing the petition is condoned.

Application is allowed.

C.R.P. 118/2016

1. By the present petition the petitioner seeks to impugn the orders dated 19.12.2015 and 2.02.2016 by which the application of the petitioner for setting aside the ex parte proceedings was dismissed and his application for review of the said order was also dismissed respectively.

2. As per the application filed by the petitioner under Order 9 Rule 7 CPC summons were served on the petitioner on 15.9.2015 for the date fixed

i.e. 19.10.2015. It is averred that on 19.10.2015 counsel for the defendant appeared before the court at 10.30 AM when he was informed by the Reader that the matter has been passed over. Counsel thereafter got stuck in some other court. Later on, it is claimed that the counsel was informed that the next date of hearing is 19.12.2015. It is further urged that the counsel came to know about the ex parte proceedings on 2.11.2015 when the order was checked on the website of the Delhi District Courts. On the basis of this, it is averred that the non-appearance before the court was neither deliberate nor intentional. Accordingly, the application was filed on the date fixed by the court i.e. 19.12.2015.

3. A perusal of the order dated 19.12.2015 shows that the trial court dismissed the application holding that as per law of limitation a period of 30 days is provided for moving the application for setting aside the ex parte order and that the application has not been moved within the limitation period.

4. The schedule to the Limitation Act, 1963 provides limitation for restoration of the suit and for setting aside an ex parte decree for 30 days. Relevant provision reads as follows:-

	Description of appeal	Period of Limitation	Time from which period begins to run
122	“To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of	Thirty days	The date of dismissal

	process or to furnish security for costs.		
123	To set aside a decree passed <i>ex parte</i> or to re-hear an appeal decreed or heard <i>ex parte</i> .	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree

5. The third division relating to application of the schedule does not stipulate any timeframe for moving application for setting aside ex parte orders. This court in ***DDA vs. Shanti Devi & Anr. (AIR 1982 Del. 159)*** held that there is no limitation prescribed for moving an application under Order 9 Rule 7 CPC.

6. In view of the above, the impugned order dated 19.12.2015 suffers from manifest errors of law on the face of the record. The said order is accordingly set aside. The trial court is requested to reconsider the application under Order 9 Rule 7 CPC as per law.

7. Petition stands disposed of.

8. A copy of this order be given dasti under signatures of the court master to counsel for the petitioner.

JAYANT NATH, J

AUGUST 09, 2016

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