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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 446/2016**
SANTOSH VERMA & ORS

..... Petitioners

Through Mr.Gurmit Singh Hans and Mr.
Vishal Soni, Advocates.

versus

BRIJ DWIVEDI

..... Respondent

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **09.05.2016**

C.M. No.17286/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 446/2016

Petitioner is aggrieved by the order dated 02.3.2016 vide which the application filed by the defendant under Order IX Rule 7 of the CPC seeking setting aside of an ex parte order dated 25.3.2015 had been permitted.

Attention has been drawn to the impugned order. Learned counsel for the petitioner submits that the Trial Court itself had noted that this was this was a half hearted drafted application which had been made by the defendant seeking setting aside of an ex parte order

dated 25.3.2015. The application had been filed in October, 2015. The discretion exercised by the Trial Court was unfair and the impugned order is liable to be set aside.

This Court is not in agreement with the submission made by the learned counsel for the petitioner. The suit pending before the Trial Court is a suit for permanent injunction and declaration. The defendant is stated to be a builder by profession. The redevelopment of the suit property had not been carried out by the defendant in terms of the collaboration agreement entered into between the parties. This Court has been informed that the written statement has already been filed by the sole defendant at the time when the order dated 25.3.2015 had been passed wherein the defendant had been proceeded ex parte. The Court below has noted the facts in the correct perspective and noted that a valuable right would be lost to the defendant in case he is not allowed to plead his defence. The written statement being a part of the record the ex parte order been set aside as a fair discretion exercised by the Court permitting defendant to cross-examine PW-1. This discretion exercised by the Trial Court in no manner calls for any interference. Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MAY 09, 2016

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