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

+ CM(M) 436/2016 & CM No.16858/2016 (stay)

VIJENDER PRAKASH & ANR Petitioners
Through Mr.K.Venkatraman & Mr.M.C.
Kashyap, Advocates

versus

PRASANA KUMAR Respondent
Through Mr.Sanad Kr.Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **02.11.2016**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 01.02.2016 dismissing the review application of the petitioners for review of order dated 13.05.2015. By order dated 13.05.2015 the right of the petitioners/defendants to file written statement was closed.

2. The brief background facts are that the present suit has been filed by the respondent for recovery of Rs.4,00,000/-. The petitioners were served on 15.09.2014. Thereafter, an application has been filed seeking amendment of the plaint which was allowed on 12.02.2015. On that date, the matter was adjourned to 24.03.2015 for filing of the written statement. The matter was also referred to the mediation centre for an attempt to try and settle the matter. On the next date, i.e., 24.03.2015 one week's time was sought by the learned counsel for the petitioners to file written statement to the amended

plaint. The matter was adjourned to 13.05.2015. On the said date, i.e. 13.05.2015 none appeared for the petitioners. Written statement was also not filed and hence, the defence of the petitioners was struck off.

3. Subsequently, the petitioners filed an application seeking review of the order dated 13.05.2015. There was a delay of 124 days in filing the review application. It was urged that the petitioners had entrusted the matter to their previous counsel and were assured that the matter was being followed up. However, it was only when the present counsel was engaged by the petitioners they found out about the order dated 13.05.2015 and that there has been lapse on the part of the previous counsel. It is also stated that though the petitioners have put the signatures on the written statement in April, 2015 but earlier counsel did not file the same on one or other pretext.

4. By the impugned order, the review application of the petitioners was dismissed noting that on 12.02.2015 and 24.03.2015 defendant No.1/petitioner No.1 was present in person on the date of hearing and hence, he was aware of the proceedings. Further it was noted that no copy of any complaint of professional misconduct against the earlier counsel had been placed on record.

5. The learned counsel appearing for the petitioners submits that merely because a complaint was not lodged against the earlier counsel could not be a ground to reject the application of the petitioners for permission to file written statement. He also submits that the suit filed by the respondent for recovery of Rs.4,00,000/- is without any merits. He further submits that grave prejudice would be caused to the petitioners in case the suit is allowed to proceed without placing on record the written statement of the petitioners.

6. Keeping in view the facts that firstly, the respondent himself delayed

the matter by filing the application under Order 6 Rule 17 CPC, secondly the matter had also been sent to the mediation centre which also possibly caused delay, it is in the interest of justice that the present petition be allowed.

7. The petitioners are permitted to place on record the written statement subject to payment of cost of Rs.15,000/-. Cost be paid and the written statement be filed within one week before the trial court.

8. A copy of this order be given *dasti* under the signature of the court master to the parties.

JAYANT NATH, J.

NOVEMBER 02, 2016/v