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

+ CM(M) 763/2016

HARYANA CHESS ASSOCIATION (REGD) & ANR.... Petitioners
Through Mr.Praveen Agrawal & Mr.Dinkar
Kumar, Advocates

versus

KULDEEP SHARMA & ORS Respondents
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.08.2016

1. By the present petition, the petitioners seek to impugn the orders dated 29.04.2016, 03.06.2016 and 09.07.2016 passed by the trial court in CS No.183/2016.
2. It is the contention of the petitioners that they have filed a suit in the Delhi High Court for a decree against the respondents/defendants for a sum of Rs.21,00,000/- and injunction etc.
3. It is stated that on 21.05.2015 when the matter was pending in this court, the Joint Registrar granted another opportunity on the request of the petitioners to file evidence by way of affidavit subject to payment of cost of Rs.10,000/-. The matter was adjourned to 08.12.2015. On 08.12.2015, the Presiding Officer was on leave. Subsequently on 17.12.2015 in view of the Notification No.27187/DHC/Orgl. Dated 24.11.2015 issued by this court, the matter was transferred to the District Courts.
4. On 11.04.2016 the matter was taken up by the District Court and was

marked to the concerned court for 29.04.2016. The impugned order has been passed on that day.

5. The learned counsel for the petitioners submitted that on account of the facts that on 08.12.2015 the matter was adjourned as the Presiding Officer was on leave and on 17.12.2015 the matter was transferred from the High Court to the District Courts, there was no occasion to the petitioners to request for additional time to file evidence by way of affidavit. He also submitted that 29.04.2016 was the first effective date after transfer of the suit.

6. A perusal of the order dated 29.04.2016 shows that the trial court noted that the cost of Rs.10,000/- had not been paid and evidence by way affidavit had also not been filed. The trial court closed the evidence of the plaintiff.

7. In my opinion, in the circumstances as stated by the learned counsel for the petitioners, it is clear that the petitioners could not pay the cost of Rs.10,000/- and evidence by way of affidavit could not be filed as the matter was in transit from 08.12.2015 till the impugned order was passed on 29.04.2016.

8. The learned counsel for the petitioners submits that the copy of the present petition has been served on the learned counsel for the respondents in advance and the cost of Rs.10,000/- has already been paid. Despite service of advance copy none has appeared for the respondents.

9. In view of the above, the impugned order dated 29.04.2016 is *set aside* subject to payment of cost of Rs.20,000/-. Evidence by way of affidavit shall be filed by the petitioners within a period of three weeks from today.

10. An opportunity will be granted to the defendants to cross-examine the witness of the petitioners. The petitioners would also be entitled to cross-examine the witnesses of the defendants accordingly. Orders dated 29.04.2016, 03.06.2016 and 09.07.2016 are accordingly modified.
11. With the above directions, the present petition is disposed of.
12. A copy of this order be given *dasti* under the signature of the court master to the parties.

JAYANT NATH, J.

AUGUST 09, 2016/v