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

+ C.R.P. No.116/2016

REENU SHARMA Petitioner
Through Petitioner in person

versus

NEM CHAND AND ANR. Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
05.08.2016

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CM No. 28114/2016 (exemption)

Allowed subject to all just exceptions.

CRP No.116/2016 & CM No. 28113/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 02.07.2016 by which the application of the defendants/respondents under Order IX Rule 7 CPC to set aside the *ex-parte* order dated 02.02.2016 was allowed.
2. The respondents/defendants were proceeded *ex-parte* on 02.02.2016. The respondents filed the present application under Order IX Rule 7 CPC stating that the defendants/respondents are senior citizen and defendant No.1 is suffering from serious disease of cancer in the urinary bladder. It was stated that defendant No.1 is under treatment with the Tata Memorial Hospital, Mumbai. The respondents who are husband and wife used to visit Mumbai month by month for appropriate treatment. It is further stated that

there was some misunderstanding with their previous counsel and on 27.11.2015 the respondents were told by their previous counsel that the next date of hearing is 26.02.2016. Hence, none appeared for the respondents on 02.02.2016.

3. The trial court vide impugned order noted that the respondent were not well, were senior citizens and they were in Mumbai for the treatment of defendant No.1 on 05.01.2016 and could not return till 02.04.2016. Accordingly, the trial court *set aside* the *ex-parte* order subject to payment of cost of Rs.2000/-.

4. The petitioner appearing in person vehemently argues that the respondents are making false averments. He relies upon the train ticket placed on record from Bandra Terminus to New Delhi where the date of travel is stated as 12.01.2016 from Mumbai to New Delhi. Based on this ticket, he contends that the respondents are very much in town when they were proceeded *ex-parte* on 02.02.2016 and that the impugned order has been obtained on falsehood stating that they were out of town from 05.01.2016 to 02.04.2016.

5. As stated above, the application of the respondents nowhere states that they were out of the town for the entire period from 05.01.2016 to 02.04.2016. The contention in the application is that they used to visit Mumbai for treatment of respondent No.1. There was some misunderstanding with the previous counsel who on 27.11.2015 communicated to them that the next date of hearing as 26.02.2016. Hence, none appeared for the respondents on 02.02.2016.

6. The averment in the application shows sufficient cause for non-appearance on 02.02.2016. Merely, because by over sight some erroneous

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facts have been stated in the impugned order does not in any manner warrant any interference by this court. The present petition is without any merit and is dismissed.



JAYANT NATH, J.

AUGUST 05, 2016/v