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

+ **CM(M) 995/2016 & CM Nos.36335-36337/2016**

METENCO (INDIA) PRIVATE LIMITED Petitioner

Through **Mr.Ratnesh Bansal and
Ms.S.S.Sastry, Advs.**

versus

**SAMVARDHANA MOTHERSON REFRIGERATION
PRODUCTS LIMITED** Respondent

Through **Mr.Manoj Kumar Garg and Mr.Prem
Advs.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.09.2016

1. By the present petition the petitioner seeks to impugn the order dated 2.4.2016 by which an application filed under Order 9 Rule 7 CPC on behalf of the petitioner/defendant was dismissed.
2. The matter was fixed before the trial court on 7.1.2016. As none appeared for the petitioner/defendant the petitioner/defendant was proceeded ex parte. Immediately thereafter on 16.1.2016 the petitioner has moved the present application for recall of the ex parte order. It was stated that the counsel for the petitioner could not appear on the said date as he was out of station. A ticket of the concerned counsel Mr.S.S.Sastry was also produced.
3. The trial court by the impugned order noted that the advocate for the defendant has no vakalatanama and is only a proxy counsel. The name of the counsel is said to be Mr.S.S.Sastry whereas the application was signed

by one Shri Ankur Gosain, Advocate. The application was signed neither by the defendant nor by the counsel. The affidavit in support was of one Shri Kamal Kishan Dhyani who is not an authorised person as his authorisation is not on record. The application was hence dismissed.

4. In my opinion the defects pointed out by the trial court are all curable defects. The petitioners have acted bona fide inasmuch within a week an application for setting aside the ex parte proceedings has been moved after the ex parte order dated 7.1.2016 was passed. I may note that a written statement has been filed on behalf of the petitioner/defendant which is signed by Shri S.S.Sastry, Advocate, on behalf of the petitioner. Further, Mr.Sastry, Advocate, who is present in court states that Shri Ankur Gosain is an Associate who has recently joined him.

5. In my opinion, there was sufficient cause to set aside the ex parte proceedings against the petitioner. The defects noted by the trial court were all curable defects and cannot be a ground to non est the petitioner. There were no grounds to disbelieve the counsel for the petitioner on his contention that he was out of town. Petition is allowed and ex parte proceedings against the petitioner is set aside.

JAYANT NATH, J

SEPTEMBER 30, 2016

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