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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1097/2016
M/S KKT REALTORS PVT LTD Petitioner
Through Mr.Kundan Kumar, Advocate

versus

PRAVEEN SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
27.10.2016

CM No.40390/2016

Exemption allowed, subject to all just exceptions.

CM No.40391/2016

For the reasons stated in the application the delay in re-filing the petition is condoned. Application is allowed.

CM(M) 1097/2016 & CM No.40389/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 19.7.2016 by which an application under section 151 CPC filed by the petitioner/defendant for setting aside the earlier order dated 12.2.2016 closing the right of the petitioner to lead evidence was closed.
2. Despite service of advance copy of the petition none has appeared for the respondent.
3. Respondents have filed the present suit for recovery of

Rs.11,55,000/-. On 12.2.2016 the trial court noted that the matter is fixed for defendant's evidence but no defendant's witness is present. Previous costs have also not been paid. Hence, defendant's evidence was closed. The petitioner thereafter filed an application under section 151 CPC for setting aside the order dated 12.2.2016. In the application it is averred that the defendant/petitioner was not in a position to appear before the court as he was not feeling well and was suffering from stomach infection. Hence, it was prayed that the order dated 12.2.2016 be set aside and the petitioners be permitted to lead evidence. By the impugned order dated 19.7.2016 the trial court dismissed the application. It noted that the petitioners have failed to disclose sufficient cause for not producing evidence on seven different dates since 15.3.2015 and holding that the application of the petitioner is without merits the application was dismissed.

4. Learned counsel for the petitioner submits that the averments in the application under section 151 CPC were genuine. He further submits that the costs that were imposed had already been paid as is evident from the receipt of UCO Bank dated 17.12.2015 i.e. prior to the date when the evidence of the petitioner was closed on 12.2.2016. He submits that it would be in the interest of justice that a final opportunity is granted to the petitioner to complete his evidence. He further submits that there are only two witnesses to be examined, namely, the Managing Director of the petitioner company and summoning of Sub Registrar from concerned office in Jaipur.

5. Keeping in view the facts and circumstances and in the interest of justice, one final opportunity is granted to the petitioners to lead their evidence subject to payment of costs of Rs.20,000/-. The petitioners shall be granted no adjournment on the dates that the trial court fixes for the

evidence of the petitioners in the subsequent proceedings. The petitioners shall ensure their witnesses are present on the dates fixed by the trial court for their evidence including, if necessary, summoning Dasti the concerned witness from the office of Sub-Registrar.

6. With the above, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

7. Dasti.

JAYANT NATH, J

OCTOBER 27, 2016

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