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

+ CM(M) 868/2016

M/S ARN INFRASTRUCTURE INDIA LTD Petitioner
Through Mr.Dhruv Gupta, Advocate.

versus

MAMTA PRAKASH Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **05.09.2016**

CM No. 32372/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 868/2016 and CM No. 32371/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 18.05.2016 passed by the trial court dismissing the application under Order 9 Rule 7 CPC filed by the petitioner for setting aside the ex parte order. The petitioner was proceeded ex parte vide order dated 20.01.2016.
2. The petitioner filed the present application seeking setting aside of the order dated 30.01.2016 (wrongly stated in the application, actual date is 20.01.2016). It was contended that the counsel who was to attend the matter, namely, Ms.Stuti Gupta who was handling the matter on behalf of the Law Firm engaged by the petitioner was suffering from high fever and subsequently, was detected with typhoid. The medical report from the pathology lab was also placed on record.

3. The trial court by the impugned order noted that Ms.Stuti Gupta has never appeared for the defendant/petitioner earlier and that there is no vakalatnama of Ms.Stuti Gupta on record. The trial court also noted that the suit was instituted in March 2014 and since then, either Sh.Sanjay Singh or some other advocates have been appearing on behalf of the defendant/petitioner and Ms.Stuti Gupta has never appeared before the court prior to the order dated 20.01.2016. Her vakalatnama was also not on record. Accordingly, it was held that Ms.Stuti Gupta not being an advocate of the defendant/petitioner, no grounds are made out to set aside the order.

4. Learned counsel appearing for the petitioner has submitted that it was a law firm, namely, M/s Lex Alliance, Advocates which was handling the matter and Ms.Stuti Gupta is one of the counsels in the firm. He submits that in the standard vakalatnama of the law firm the names of the concerned counsels are stated.

5. He also points out that after having proceeded ex parte, on 27.02.2016 the presence of Ms.Stuti is also recorded. He submits that the earlier counsel-Sanjay Singh had left the firm and thereafter, Ms.Stuti Gupta has been taking care of the matter.

6. In my opinion, the impugned order appears to have been passed ignoring the fact that in law firms, several counsels are working who do occasionally interchange for purposes of appearing in a particular matter. Merely because earlier the presence of the said advocate-Ms. Stuti was not recorded, in these facts and circumstances, cannot be concluded that the said counsel was not an advocate for the petitioner.

7. In fact, before this court, the vakalatnama of the petitioner states as follows:

“.. the above-named applicant do hereby appoint Shri Vivek Singh, Shri Tanveere Ahmed Mir, Shri Jitesh Pandey, Ms.Ashu Arora, Shri Dhruv Gupta, Shri Akarsh Bhalla, Arjun Singh Bhati, Ms. Upasana Talwar, Shri Pankaj Anil Aora, Mr. Aakash Sherwal, Ms. Stuti Gupta, Mr. Sudatta Subhankar, Ms.Diviani Khanna, Ms.Prachi Trehan Advocates

M/s. Lex Alliance, Advocates
A-414, LGF, Defence Colony, New Delhi-110024.
Ph.No. 46543435, 36, 37”

8. A perusal of the pathology report of Dr.Abha Garg clearly points out that the said counsel Ms.Stuti Gupta has been deducted with Typhoid. In these facts and circumstances, to discard the said report on the ground that the said advocate is not appearing for the petitioner appears to be a misplaced conclusion.
9. Advance copy of the petition has been sent to the respondent by courier on 31.08.2016. However, none is present for the respondent.
10. In the light of the above, the impugned order dated 18.05.2016 is set aside. The ex parte proceedings against the petitioner dated 30.01.2016 are also set aside.
11. The petition stands disposed of as above.

JAYANT NATH, J

SEPTEMBER 05, 2016
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