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

+ CM(M) 866/2016

RAMAN BHATIA & ANR ..... Petitioners  
Through Mr.Ashish Verma, Advocate.

versus

ANUJ BHATIA & ANR ..... Respondents  
Through None.

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**  
% **05.09.2016**  
**CM No.32276/2016 (exemption)**

Exemption is allowed subject to all just exceptions.

**CM(M) 866/2016 and CM No. 32275/2016(stay)**

1. By the present petition, the petitioner seeks to impugn the order dated 13.07.2016 by which the application of the petitioner filed under Section 151 CPC for recalling the earlier order dated 02.11.2015 closing the defence of the petitioner/defendant was dismissed.
2. On 02.11.2015, the trial court, in view of the fact that none was present for the defendant and the previous cost had also not been paid, struck off the defence of the defendant and the defendant's evidence was also closed.
3. On 06.01.2016, the petitioner moved the present application seeking recall of the order dated 02.11.2015. It was contended before the trial court that the counsel for the petitioner was stuck up in Rohini District Courts and

he could only reach the court by 1.00 P.M. It is further submitted that the counsel was carrying the costs of Rs.2,000/- imposed by the court on the last date of hearing. It was further stated that after reaching the court, the counsel for the petitioner had mentioned the matter in the court and requested for his presence to be marked but the court did not accept the said request. It was further stated that the petitioner/defendant was out of Delhi to attend some urgent meeting.

4. By the impugned order the trial court dismissed the application holding that though there was an averment that the counsel for the petitioner was held up in another district court, the application fails to mention even the name of the case or the court in which the counsel was required to attend. The defendant also claims to have been out of town in some urgent meeting, but no details are stated, namely, the name of the town, the nature of the urgent meeting. Even the copies of the tickets which are prima facie proof of having travelled out of town have not been placed on record. It was also noted that there were much delay in moving the application.

5. Learned counsel appearing for the petitioner submits that the affidavit of the petitioner as evidence is already on record. He seeks only one last opportunity to lead evidence and that the earlier error took place by inadvertence and not account of any deliberate intention.

6. A perusal of the application filed by the petitioner under Section 151 CPC shows that it is supported by an affidavit of the petitioner. Normally, averments made in this manner would prima facie suffice to accept the factual narration stated in the application.

7. It would be interest of justice that the petitioner is given one last opportunity to lead their evidence. The petitioner could not be shut for a

lapse which can be offset by appropriate costs to the respondent.

8. An advance copy of this petition has been sent by courier to the respondents on 31.08.2016 but none is present for the respondents.

9. Accordingly, the impugned order dated 13.07.2016 is set aside subject to payment of costs of Rs.5,000/- which shall be paid on or before the next date of hearing before the trial court. The order dated 02.11.2015 is recalled. One last opportunity is granted to the petitioner to produce his witness for cross-examination on the date for that purpose to be fixed by the trial court.

10. In view of the above, the petition is disposed of.

**JAYANT NATH, J**

**SEPTEMBER 05, 2016**

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