

\$~53

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

+ CM(M) 1011/2016

M/S COLLAGE ESTATES (P) LTD Petitioner
Through Mr.Alok Kumar Shukla & Mr.Deepak
Matla, Advocates

versus

M/S OCEAN WATERPROOFING Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

03.10.2016

1. By the present petition, the petitioner seeks to impugn the order dated 16.07.2016 passed by the trial court whereby an application filed by the petitioner under Order 9 Rule 7 CPC for setting aside order 31.03.2015 and *ex-parte* order dated 23.02.2016 was dismissed.
2. The respondent has filed the present suit for recovery of Rs.17,52,038/-. The trial court has noted that on 06.02.2016 the petitioner caused appearance in the matter through law officer. Subsequently, neither the petitioner appeared nor filed any written statement, defence of the petitioner was struck-off vide order dated 31.03.2015. The trial court further noted that even after the order dated 31.03.2015 none appeared for the petitioner on any of the subsequent dates. The respondent filed his evidence and the evidence was closed on 23.02.2016 and the petitioner got proceeded *ex-parte*.

3. Advance copy of the present petition has been sent to the respondent by speed post. However, none is present for the respondent.
4. Noting the vague pleas taken by the petitioner in the application, the present application was dismissed.
5. The learned counsel appearing for the petitioner submits that the application in question had sought two reliefs. First was for seeking setting aside order 31.03.2015 by which defence of the petitioner was closed and second pertains to petitioner being proceeded *ex-parte* by order dated 23.02.2016. He submits that the petitioner is only seeking to challenge before this court the order by which the trial court failed to set aside the *ex-parte* order against him. He submits that great prejudice would be caused to the petitioner if the petitioner is not allowed to cross-examine the respondent's witness.
6. Though agreeing with the order of the trial court that the application under Order 9 Rule 7 CPC is drafted in a very vague and flimsy manner, however, keeping in view the fact that great prejudice is likely to be caused to the petitioner if he is not allowed to cross examine the witness of the respondent, the order of the trial court dated 16.07.2016 is partly modified and the *ex-parte* order dated 23.02.2016 is set aside. Liberty is granted to the petitioner to cross-examine PW-1 on a date so fixed by the trial court, subject to payment of cost of Rs.15,000/-.
7. In view of the above directions, the present petition is disposed of.

JAYANT NATH, J.

OCTOBER 03, 2016/v