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

+ CM(M) 951/2016

ABHAY KAKKAR

..... Petitioner

Through Mr.J.S.Bakshi, Mr.Amitesh Singh
Bakshi and Mr.Ankush Sharma, Advocates.

versus

M/S TIP TOP GENERAL AGENCIES PVT LTD..... Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **23.09.2016**

CM No. 34937/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 951/2016 and CM No.34936/2016 (stay)

1. By the present petition, the petitioner seeks to challenge the order dated 22.08.2016 by which the suit filed by the respondent was not dismissed.
2. Learned counsel for the respondent submits that in the present case issues were framed on 26.03.2011. He submits that thereafter on 25.03.2014 PW-1 was partly cross-examined and was directed to bring original of Ex.- PW-1/DA. He submits that on various dates, PW-1 did not appear. In fact, on 23.03.2016 a submission was noted that the said PW-1/the AR of the respondent has resigned from the respondent Company. Thereafter no steps

have been taken.

3. On 22.08.2016 none appeared for the respondent. The trial court noted that even the cost which was imposed on the respondent has not been paid. The trial court closed the plaintiff's evidence and adjourned the matter for defendant's evidence.

4. Learned counsel for the petitioner submits that the onus to prove the relevant issues is on the respondent. As no evidence has been led by the respondent, the suit is liable to fail

5. The issues which were framed on 26.03.2011 reads as follows:-

“1. Whether the Plaintiff is entitled to Suit amount of Rs.76,871/- as prayed for? OPP.

2. If Issue No.1 is answered in the affirmative, whether the Plaintiff is entitled to interest, if yes, at what rate and for what period? OPP

3. Whether the suit is without any cause of action? OPD

4. Relief.”

6. The two relevant issues are as to whether the plaintiff is entitled to Rs.76,871/- and if so, whether the plaintiff is entitled to interest. The onus to prove these issues is on the plaintiff/respondent.

7. Under Section 101 of the Evidence Act whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. In the absence of any evidence on record of the plaintiff, the suit is bound to fail.

8. Accordingly, there is merit in the contention of the petitioner. No purpose is served by leading defendant's evidence in view of the issues that have been framed. The impugned order dated 22.08.2016 suffers from material irregularity. The same is quashed and the suit is directed to be

dismissed in default.

9. Copy of the order be given Dasti under the signatures of the Court Master.

JAYANT NATH, J

SEPTEMBER 23, 2016/rb