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

+ **CM(M) 986/2016**

JYOTI

..... Petitioner

Through Ms.Neha Kapoor, Advocate.

versus

JASBIR SINGH

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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28.09.2016

CM No. 35954-55/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 986/2016

1. By the present petition, the petitioner seeks to impugn the orders dated 01.09.2015, 03.05.2016, 14.05.2016 and 28.05.2016.
2. The grievance of the petitioner is that the suit was withdrawn by the plaintiff/respondent on 01.09.2015. The petitioner had filed an application for contempt being under Order 39 Rule 2A CPC which was also inadvertently dismissed as withdrawn on the statement of the respondent on 01.09.2015. Learned counsel appearing for the petitioner submits that the respondent could not have withdrawn a contempt petition filed by the petitioner and hence, the order dated 01.09.2015 is palpably erroneous on the face of the record. She submits that hence, the present review application

was filed to set aside the said order.

3. It appears that the review application was listed on 03.05.2016 when none appeared for the petitioner. The application was dismissed in default.

4. The petitioner thereafter filed an application under Section 151 CPC for restoration pointing out that the counsel had inadvertently noted the wrong date as 13.05.2016 and not 03.05.2016. On account of the said wrong noting, there was non-appearance of the petitioner/counsel on 03.05.2016 which was a bona fide mistake. The copy of the diary of the counsel was also attached.

5. The trial court by the impugned order dated 14.05.2016 noted that as per the record, the applicant has not been appearing regularly in the present matter. The trial court noted that though the copy of the diary has been filed in court on that day, there is no averment to the said effect in the application. It also noted that the applicant/petitioner was not present in person on 30.03.2016 and it cannot be said that the petitioner noted the wrong date. Holding that the plea is casual and sufficient ground for restoration is not made out, the review application was dismissed.

6. A perusal of the application for restoration filed by the petitioner shows that in para 4 it is stated that “the copy of the diary of the counsel is attached”. Further, the order dated 30.03.2016 shows that the presence of the daughter of the petitioner is marked.

7. It may be noted that bonafidely noting of wrong date by an advocate would constitute sufficient cause of non-appearance by an advocate on the date fixed. Reference may be had to the judgments of this court in the cases of *Sunder Kukreja & Ors. v. Mohan Lal Kukreja & Ors.*, 2002(98) DLT 704 and *Bimla v. Sukhvinder Singh*, 2002 (6) AD(Delhi) 932.

8. In the above circumstances, the order dated 14.05.2016 is erroneous. The application mentions about the diary of the counsel. The daughter of the petitioner as per the order was present in the court. In my opinion, there was sufficient reason for non-appearance of the petitioner/counsel for the petitioner on 03.05.2016.

9. Advance copy of the petition has been sent to the respondent by speed post but none is present for the respondent.

10. In view of the above, the review petition filed by the petitioner is restored. The petitioner may appear before the concerned court on 22.10.2016 for hearing on the review petition.

11. With the above observations, the present petition stands disposed of.

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

JAYANT NATH, J

SEPTEMBER 28, 2016

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