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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 547/2015 & C.M. No.10447/2015
LALIT SINGH

..... Petitioner

Through Mr.Mukesh Gupta, Advocate.

versus

HARISH BAJAJ

..... Respondent

Through Mr.Saumitra Singhal, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **03.02.2016**

Order impugned before this Court is the order dated 12.02.2015 which had been passed by the Additional District Judge who had set aside the order dated 16.11.2013 passed by the Civil Judge. This was on an application filed by the plaintiff seeking restoration of the suit which had been dismissed in default on 20.10.2012. The Civil Judge had dismissed the application but this order was reversed by the Additional District Judge.

The impugned order had noted the facts in the correct perspective noting a submission made by the learned counsel for the petitioner that a substantial right of the plaintiff would be lost in case he is not allowed to proceed with his suit.

The Trial Court record shows that the suit had been dismissed on 20.10.2012. Contention of the plaintiff before the Appellate Court was that he had wrongly noted the next date as 30.01.2013 that is why the

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counsel could not appear to represent the plaintiff on the date when the suit was dismissed in default. The application seeking restoration of the suit had been filed on 15.02.2013.

Learned counsel for the petitioner submits that there are inherent contradictions in the averments of the plaintiff; in the first application under Order IX Rule 9 CPC (copy of which has been furnished to him) he has stated that he has wrongly noted the date as 06.11.2012 whereas before the Appellate Court he has stated that he has wrongly noted the date as 30.10.2013. These contradictions show the dishonesty on the part of the plaintiff.

Be that as it may, the Trial Court had noted that the wrong noting of the date was an act of the counsel and the plaintiff and thus could not penalize the plaintiff. Technicalities should also not come in the way as these are only procedural errors, if any. The suit of the plaintiff was yet at the stage of evidence of the plaintiff. It was a suit for recovery of money.

In this background, the impugned order having set aside the order passed by the Civil Judge and restoring the suit of the plaintiff with costs of Rs.20,000/- suffers from no infirmity. Petition dismissed.

INDERMEET KAUR, J

FEBRUARY 03, 2016

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