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

+ **CM(M) 1121/2016, CM Nos. 41500-41501/2016**

M/S GROUPE SEB INDIA PRIVATE LIMITED Petitioner

**Through Mr.J.S.Bakshi, Mr.A.S.Bakshi &
Mr.Ankush Sharma, Advocates**

versus

M/S MARC N PHILIP & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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08.11.2016

CM No. 41500-41501/2016(exemptions)

Allowed subject to all just exceptions.

CM(M) 1121/2016

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 15.12.2015 by which an application filed for recalling of an earlier order dated 10.09.2014 was dismissed. On 10.09.2014 the court had rejected the plaint for non-filing of the court fees.

2. On 14.08.2014, the trial court after hearing argument on the application for filing of court fee directed that the court fee be filed on or before the next date of hearing, i.e. 10.09.2014. On 10.09.2014 when none appeared for the petitioner the plaint was rejected.

3. The petitioner has now filed the present application for recalling of order dated 10.09.2014. It was submitted that though the court fees had been purchased, the matter was entrusted to an associate counsel but the said counsel has to rush to his native village on account of personal difficulty and did not enter the date in the diary of the main counsel or inform the main counsel. On account of non-entering of the particulars and the date, none appeared on 10.09.2014. Even the authorised representative of the petitioner company who was dealing with the case of the petitioner left the company in January, 2015 without noting any material particular. It was only in October, 2015 when the new authorised representative of the petitioner company enquired about the status of the present case then it has come to the knowledge of the petitioner company about order dated 10.09.2014.

4. The trial court vide the impugned order noted that the application is filed more than one year after the rejection of the plaint. It remained unexplained by the petitioner as to what steps were taken by them to know about the exact proceedings of the case. Certain other minor lacunae are also pointed out in the impugned order and the application was dismissed.

5. In my opinion, the impugned order suffers from material deficiencies. The application has been dismissed by the trial court on the grounds that the petitioner has failed to take any steps to know about the exact proceeding of the case; moving of the application belatedly shows the callous approach of the petitioner and the application is not accompanied by any substitution application for substitution of the AR of the petitioner company.

6. Perusal of the application shows that the information has been given about the associate counsel not being able to appear and about the authorised representative who left the service of the petitioner company. Court fees had

been purchased on 08.09.2014 two days prior to the date of dismissal which also shows the bonafide of the petitioner. Hence, there were sufficient grounds to allow the application of the petitioner.

7. The respondents were not served in the suit. Hence, there is no need to serve the respondents with a notice for this petition.

8. Keeping in view the above facts, the impugned order is set aside. The suit is restored to its original number and shall proceed as per law. The court fee be filed within one week from today.

9. The present petition stands disposed of.

10. *Dasti.*

JAYANT NATH, J.

NOVEMBER 08, 2016/v