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

+ RFA 741/2015

P. SRIDHAR KUMAR & ANR

..... Appellants

Through: None

versus

MAJ R VASUDEVAN & ORS

..... Respondents

Through: Mr. Amit Bajaj, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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01.12.2016

CM APPL. 15095/2016 (by R-1 for dismissal of the appeal)

1. The present application has been filed by the respondent No.1 praying *inter alia* for dismissal of the appeal on account of non-compliance of the order dated 05.02.2016.
2. Notice was issued on this application on 27.04.2016, returnable on 19.05.2016. On 19.05.2016, fresh notice was issued to the non-applicants/appellants returnable on 05.09.2016 and thereafter on 17.11.2016. On 17.11.2016, counsel for respondent No.1 had stated that he had personally served the counsel for the appellants with a copy of this application at his chamber at the Tis Hazari Court Complex. He had handed over proof of service, which was taken on record. Despite service of the application on the appellants, none was present on their behalf on the above

date. However, in the interest of justice, no adverse orders were passed and the case was adjourned for today. The position remains the same today. Neither has a reply been filed by the appellants nor are the appellants represented through counsel.

3. Counsel for the respondent No.1 states that there was a delay of 22 days in filing and 156 days in re-filing the appeal. Vide order dated 15.02.2016, the delays of 22 days in filing and 156 days in re-filing the appeal were condoned, subject to costs of Rs.7,500/- and Rs.5,000/- respectively to be paid by the appellants to the counsel for the respondent No.1 within four weeks. It was also observed that if the said costs are not paid, then the applications will stand dismissed and resultantly, the appeal would also stand dismissed.

4. Counsel for the respondent No.1 states that despite specific directions issued to the appellants to pay the costs within four weeks, i.e., on or before 05.03.2016, the said costs have not been tendered till date. He states that the position remains the same till date as costs have not been tendered.

5. In these circumstances, this Court has no option but to give effect to the order dated 05.02.2016, by dismissing the appeal on account of non-compliance. The application is allowed. The appeal is dismissed.

HIMA KOHLI, J

DECEMBER 01, 2016

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