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

+ CM(M) 1153/2015 & CM No.28072/2015

SHABBIRAN & ANR ..... Petitioners

Through Mr.Imran Khan, Advocate

versus

SALAUDDIN & ANR ..... Respondents

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **15.09.2016**

1. By the present petition, the petitioners/plaintiff seek to impugn the order dated 13.10.2015 by which the application filed by the petitioners under Section 151 CPC for recalling the order dated 28.07.2015 was dismissed.
2. The petitioners have filed the present suit for mandatory and permanent injunction.
3. On 28.07.2015 the trial court noted that despite several opportunities, the plaintiff has neither led evidence nor deposited the cost. Hence, the evidence of the petitioners was closed.
4. The petitioners thereafter filed an application under Section 151 CPC for recalling of the said order. In the application, it was noted that the learned counsel for the petitioners had noted the date as 28.08.2015 instead of 28.07.2015 and because of this mistake none appeared for the petitioner on that date. The trial court noted that the matter was taken up on

24.08.2015 when the petitioner has appeared in person. Hence, it concluded that the application of the petitioners stating that the wrong date has been noted as 28.08.2015 is an incorrect statement. Further, the application was moved by the plaintiffs after inordinate delay. Hence, the trial court dismissed the application.

5. The learned counsel for the petitioners submits that the application gives correct facts namely that the learned counsel for the petitioners has wrongly noted the date as 28.08.2015. On 24.08.2015 one of the relatives of the petitioner had appeared on his own on 24.08.2015 who had seen the matter on the list. The learned counsel had no information about the matter being listed on 24.08.2015.

6. Keeping in view the explanation given by the petitioners, the impugned order dated 13.10.2015 and order dated 28.07.2015 are set aside. The plaintiffs shall be given one last opportunity to lead their evidence on the date so fixed by the trial court. The petition stands disposed of.

7. A copy of this order be given *dasti* under the signature of the Court Master to the parties.

**JAYANT NATH, J.**

**SEPTEMBER 15, 2016/v**