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

+ CRL.M.C. 5150/2015 and Crl.M.A.No.18542/2015

M/S KUMAR AGRO FOOD PRODUCTS

..... Petitioner

Through: Mr.Sunil Kumar, Advocate.

versus

ICICI BANK LTD & ANR

..... Respondents

Through: Mr.Punit K. Bhalla, Advocate for R1.
Mr.Kewal Singh Ahuja, APP for R-
2/State.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

29.11.2016

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This is a petition under Section 482 Cr.P.C, the petitioner seeks setting aside the order dated 20.11.2015 and 01.12.2015 passed by the learned Special Judge, PC Act, CBI-III, Rohini Courts, Delhi in Criminal appeal No.69/2015 whereby the appeal filed by the petitioner was dismissed in default and his subsequent application seeking restoration of the appeal was also dismissed.

Learned counsel for the petitioner has submitted that non-appearance of the petitioner before the Trial Court on 20.11.2015 was not intentional but due to some unavoidable circumstances, however, the Court below

dismissed in default the appeal of the petitioner without giving an opportunity of being heard and also dismissed his subsequent application seeking restoration of the appeal. Counsel further submits that both the aforesaid orders passed by the Court below are too harsh, rather they take away the vested right of appeal of the petitioner against his conviction and sentence and prays that both the impugned orders passed by the Court below may be set aside/quashed and the appeal filed by the petitioner may be restored to its original number.

Learned counsel for the respondent No.1/Bank, on the other hand, opposes the present petition. He, however, submits that if this Court is inclined to allow the present petition, then the Court below may be directed to dispose of the appeal filed by the petitioner within one month.

Looking into the facts and circumstances, since the appeal filed by the petitioner has been dismissed in default and the appeal filed by the petitioner was not heard on merits, it is expedient and in the interest of justice to give an opportunity to the petitioner to contest the appeal on merits. Consequently, both the impugned orders dated 20.11.2015 and 01.12.2015 passed by the learned Trial Court are hereby set aside and the appeal filed by the petitioner is restored to its original number.

Parties are directed to appear before the Court concerned on 6th December, 2016. The Trial Court shall hear the parties and decide the appeal in accordance with law as early as possible and preferably within a period of six months.

The present petition stands disposed of in the above terms.

Copy of this order be given *dasti* to the parties and a copy of the order be also sent to the learned Trial Court concerned for information and compliance.

I.S.MEHTA, J

NOVEMBER 29, 2016

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