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

+ CM(M) 132/2017

RAJ PURI & ANR

..... Petitioners

Through: Mr.Pradeep Arya, Advocate.

versus

MADHU PURI & ANR

..... Respondents

Through: Mr.Sanjeev Bajaj, Advocate for R-1.
Mr.Karan Sharma and Mr.Rohit,
Advocates for R-2/DDA.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.05.2017

CM(M) 132/2017

1. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 1st February, 2016 whereby the Civil Suit No.740/2016 filed by the petitioners has been dismissed in default as well as for non-prosecution and the order dated 19th November, 2016 whereby the application under Order IX Rule 4 CPC filed by them for restoration of the suit has been dismissed.
2. Learned counsel for the petitioners submits that the petitioners have already led their evidence in the civil suit. The petitioners have prayed that the matter may be allowed to be adjudicated on merits by restoring the civil suit to its original number.
3. Respondent No.1 – the contesting respondent is represented by Mr.Sanjeev Bajaj, Advocate.

4. Respondent No.2/DDA is the proforma respondent and is represented by Mr.Karan Sharma, Advocate.
5. Learned counsel for respondent No.1 submits that he has no objection if an opportunity is granted to the petitioners to get the matter adjudicated on merits by restoring the civil suit to its original number, subject to such terms and conditions as deemed by this Court but at the same time, opportunity may also be granted to the defendants to lead defence evidence.
6. Perusal of the record reveals that Civil Suit No.740/2016 was dismissed in default as well as for non-prosecution on 1st February, 2016. On that date, defendants had appeared before the learned Trial Court. The application seeking restoration of the suit has been dismissed by the learned Trial Court on 19th November, 2016.
7. In view of the submissions made by learned counsel for the petitioners and no-objection given by learned counsel for the respondent No.1, the petition is allowed and Civil Suit No.740/2016 is restored to its original number, subject to payment of cost of Rs.50,000/- by the petitioners to learned counsel for the respondent No.1.
8. The parties are directed to appear before the learned Trial Court on 4th July, 2017. The petitioners/plaintiffs shall pay the cost to learned counsel for the respondent No.1/defendant No.1 on or before 4th July, 2017.
9. It is made clear that if cost is not paid by the date fixed i.e. on 4th July, 2017, this petition shall stand dismissed.
10. Needless to state that after the suit is restored to its original number, opportunity shall be given to the defendants to lead their defence evidence.
11. The petition is allowed with above observations.
12. A copy of this order be sent to the concerned Court for information

and compliance and be also given dasti to learned counsel for the parties.

CM No.4292/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 16, 2017

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