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

+ CM(M) 25/2017 and CM Nos. 881-82/2017

SANJAY GUPTA

..... Petitioner

Through Mr.Swastik Singh Solanki, Advocate.

versus

M/S VIVEK DUTTA (HUF) & ORS

..... Respondents

Through Mr.Ankit Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.01.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 02.12.2016 whereby an application filed by the respondents under Order 9 Rule 7 CPC was allowed and the ex parte proceedings dated 12.11.2013 were set aside.
2. The respondents/defendants were proceeded ex parte on 12.11.2013. The present application under Order 9 Rule 7 CPC was filed on 01.07.2014. The application essentially seeks to urge that there was some misunderstanding with the earlier counsel and hence, a new counsel was engaged on 31.05.2013. On 26.05.2014, when the concerned respondent contacted the advocate to find out about the next date, they were shocked to know that the counsel was not even aware about the previous date or the next date. On enquiry, it was revealed that he stopped attending the court.
3. The trial court by the impugned order has held that this fact as stated

in the application constitutes a sufficient cause for setting aside the ex parte order and allowed the application.

4. Learned counsel for the petitioner has vehemently submitted that when the order for ex parte proceedings was passed on 12.11.2013, earlier also the respondents had not appeared. He submits that the ex parte evidence had been completed and the final arguments had been heard when unfortunately the judge concerned was transferred and the final arguments had to be addressed all over again. During this period that the respondents have filed the application under Order 9 Rule 7 CPC.

5. In my opinion, the trial court has rightly exercised its jurisdiction/discretion and has come to a conclusion that there was a good cause for setting aside the ex parte proceedings. There are no reasons to interfere with the said order passed by the trial court. Merely because there was a delay of about six months in moving the application would not per se be a ground to hold that the order has been wrongly passed. There is no merit in the present petition and the same is dismissed.

6. All pending applications also stand dismissed.

JAYANT NATH, J

JANUARY 10, 2017

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