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

+ **CS(OS) 3175/2012**

GURMEET SINGH

..... Plaintiff

Through Mr. Jasmeet Singh with Ms. Gayatri
Aryan, Advocates.

versus

CENTRAL MOTORS

..... Defendant

Through Mr. S. Mukherjee with Mr. R.K.
Joshi, Advocates.

EX.P. 39/2015

GUR MEET SINGH

..... Decree Holder

Through Mr. Jasmeet Singh with Ms. Gayatri
Aryan, Advocates.

versus

CENTRAL MOTORS

..... Judgement Debtor

Through Mr. S. Mukherjee with Mr. R.K.
Joshi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **21.08.2017**

**IA No.1032/2017 (under Order IX Rule 13 CPC) & IA
No.1034/2017 (under Section 5 of the Limitation Act seeking
condonation of delay in filing the application under Order IX
Rule 13) in CS(OS) No.3175/2012**

1. The sole defendant has filed these applications seeking setting
aside of the ex-parte Decree dated 12.09.2014 and order dated
23.04.2013, proceeding ex-parte against the defendant.

Signature Not Verified

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By: AMULYA
CS(OS) 3175/2012 &
EX.P.39/2015

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2. It is contended that the defendant was never served with the summons in the suit and, as such, was not aware of the filing of the suit.

3. It is contended that the defendant has been proceeded ex-parte on the basis of an application under Order VIII Rule 1, allegedly filed on behalf of the defendant. Learned counsel for the defendant submits that the application under Order VIII Rule 1 did not pertain to the suit and was not filed by the defendant.

4. The defendant, it is contended, became aware of the suit and the passing of the above referred decree only on being served with the notice in the Ex. Pet. 39/2015, which was received around 14.12.2016.

5. It is contended that thereafter the defendant made inquiries and, immediately, on 16.01.2017, filed the present applications.

6. Perusal of the record shows that summons in the suit were though issued, however, they were never received back after service. There is no service report of service of the summons on the defendant.

7. The application under Order VIII Rule 1, which was referred to by the learned Court, while proceeding ex-parte, does not pertain to the present suit. The Order VIII Rule 1 application i.e. IA 22197/2012, which was referred to by the Court, while proceeding ex-parte, does not pertain to the present suit.

8. Perusal of the said application shows that, in the said

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application, the suit number mentioned is CS(OS) 3175/2012, which is the present suit, however, the cause title is completely different and has got no connection with the suit.

9. Since, the defendant was never served with the summons in the suit, the order proceeding ex-parte as well as the ex-parte Decree is liable to be recalled.

10. Since the defendant was not aware of the suit, sufficient cause has been shown by the defendant for not filing the application within time.

11. In view of the above, the applications are allowed. The ex-parte Decree dated 12.09.2014 and the order proceeding ex-parte dated 23.04.2013 are recalled.

CS(OS) 3175/2012

The defendants shall file the written statement as well reply to IA 19709/2017 within the statutory period. Replication, if any, be filed within four weeks thereafter.

Parties shall file their respective original documents alongwith their pleadings.

Parties shall file affidavits of admission and denial of documents within eight weeks.

Renotify before the Joint Registrar for marking exhibits, if any, on documents on 26.10.2017.

IA No.1033/2017 (under Order XXXIX Rules 1 & 2 CPC)

In view of orders passed in I.A. 1032/2017, this application has

become infructuous. The same is dismissed as such.

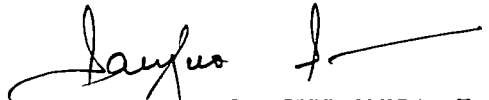
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IA No.22197/2012 (under Order VIII Rule 1 CPC)

This application does not pertain to the present suit. Accordingly, the Registry is directed not to show this application as pending in this suit. The Registry is directed to delink the said application and place it in the appropriate suit. However, the Registry shall retain a copy of this application on record, since, this application was referred to in the order proceeding ex-parte as well as has been referred to in today's order.

EX.P. 39/2015 & E.A.(OS) 48/2017 (for extension of time to furnish list of movable and immovable assets)

Since the Decree dated 12.09.2014, execution of which has been sought in this petition, has been set aside, the execution petition does not survive and is, accordingly, disposed of.


SANJEEV SACHDEVA, J

AUGUST 21, 2017
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