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

+ **FAO 70/2017 and C.M. Appl. 5347/2017**

RAM NIWAS DAGAR

..... Appellant

Through: **Mr. Raj Singh Rana and Ms. Monika
Rana, Advocates**

versus

KRISHAN KUMAR & ORS

..... Respondents

Through: **Mr. P.D. Gupta, Senior Advocate
with Mr. Atul Gupta, Advocate for
respondent No.2**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **11.04.2017**

1. The appellant has challenged the order dated 04th October, 2016 whereby the learned trial Court dismissed the appellant's application for restoration of the suit with cost of Rs.5,000/-.
2. The appellant's suit was transferred by this Court to the District Court on 27th November, 2015 and the parties were directed to appear before the Trial Court on 22nd January, 2016. The appellant did not appear before the Trial Court on 22nd January, 2016 when the case was adjourned to 29th March, 2016, 09th July, 2016 and 01st September, 2016. The suit was dismissed in default on 01st September, 2016.
3. This Court is of the view that the Trial Court ought to have restored the appellant's suit. Learned senior counsel for the respondent no.2 submits that the appellant had been delaying the suit even prior to the dismissal in default. It is submitted that issues were framed on 19th March, 2014 and no evidence has been led by the appellant.

4. Learned counsel for the appellant submits that the appellant shall not seek any unnecessary adjournment in this matter. The statement of learned counsel for the appellant is taken on record.
5. The appeal is allowed and the suit is restored subject to cost of Rs.25,000/- to be paid by the appellant to the respondent no.2 within a period of four weeks from today. The pending application is disposed of.
6. The parties shall appear before the Trial Court on 06th May, 2017. The appellant shall pay the cost to the respondent before the Trial Court on 06th May, 2017. The Trial Court shall expedite the hearing of the suit and shall ensure that no unnecessary adjournments are granted to either of the parties.
7. Learned counsel for both the parties have noted down the date of 06th May, 2017 and they waive the requirement of any separate notice for appearance before the Trial Court.
8. Learned counsel for the respondents submits that the respondents' application for amendment of the issues is pending before the Trial Court. The Trial Court shall fix the case for hearing the respondents' application for amendment of the issues.
9. The Trial Court record be returned back forthwith.
10. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

APRIL 11, 2017

rsk