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

+ C.R.P. 43/2017

VARUN GUPTA & ANR Petitioners

Through Mr.Prashant Mehta and
Ms.Vasudhara Bhardwaj, Advocates.

versus

MADHU GUPTA Respondent

Through Mr. Praveen Chauhan and Ms.Arпита,
Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **21.02.2017**

CM No. 6770/2017 (exemption)

Allowed subject to all just exceptions.

CM No. 6769/2017 (for condonation of delay)

This is an application filed under Section 5 of Limitation Act for condonation of delay of 50 days in filing of the accompanying revision petition. It is stated in the application that the certified copy of the impugned order was applied on 11.10.2016 order and was delivered on 09.01.2017. It is submitted that they had misplaced the receipt and therefore, it is urged that there is a delay of 50 days.

Keeping in view the reasons stated for the delay, the same is condoned subject to payment of costs of Rs.5,000/-.

In view of the above, the application stands disposed of.

C.R.P. 43/2017 and CM No. 6768/2017 (stay)

1. By the present petition filed under Section 115 CPC, the petitioners seek to impugn the order of the trial court dated 14.09.2016 by which the two applications filed by the petitioners under Order 9 Rule 7 CPC for setting aside the ex parte order dated 08.09.2015 and under Order 8 Rule 1 CPC for placing on record the written statement were dismissed.
2. The respondent is the mother of the petitioners. The suit has been filed by the respondent seeking declaration, cancellation, mandatory and permanent injunction. The petitioners were served on 27.07.2015. On 08.09.2015, as none appeared for the petitioners, the petitioners were proceeded ex parte and their right to file written statement was also closed. On the next date of hearing i.e. 05.11.2015, the petitioner filed two applications under Order 9 Rule 7 CPC for setting aside the ex parte order dated 08.09.2015 and under Order 8 Rule 1 CPC for permission to place on record the written statement.
3. I have heard the learned counsel for the parties.
4. Learned counsel for the respondent has argued that the conduct of the petitioners is highly casual and he submits that the application under Order 9 Rule 7 CPC has also been drafted in a very casual manner making averments which are all on the face of it incorrect.
5. A perusal of the applications filed under Order 9 Rule 7 CPC would show that the petitioners have stated that though the written statement was ready but the petitioners could not reach before the court on time. Hence, when the case was called out, none appeared for the petitioners and the petitioners were proceeded ex parte. This information was received by the petitioners when they enquired from the court's staff. Similar averments are

made in the application filed under Order 8 Rule 1 CPC.

6. A perusal of the impugned order would show that the trial court has dismissed the applications only on the ground of delay in making the applications under Order 9 Rule 7 CPC and under Order 8 Rule 1 CPC. This has been explained by the learned counsel for the petitioners that though they were proceeded ex parte on 08.09.2015, they moved the application under Order 9 Rule 7 CPC prior to the next date of hearing i.e. 03.11.2015

7. Keeping in view the averments made by the petitioners and in the interest of justice, subject to payment of costs of Rs.5,000/-, the two applications filed by the petitioners filed under Order 9 Rule 7 CPC and under Order 8 Rule 1 CPC are allowed. The written statement filed by the petitioners may be taken on record.

8. In view of the above, the present petition and all pending applications stand disposed of.

JAYANT NATH, J

FEBRUARY 21, 2017
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