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

+ C.R.P. 76/2017 and CM Nos. 11690-92/2017

RAKESH KUMAR

..... Petitioner

Through Mr. Mukesh Anand, Advocate

versus

PHOOL KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.04.2017

1. By the present petition filed under Section 115 CPC, the petitioner seeks to impugn the order dated 03.11.2016 by which order the trial court noted that the cost that was imposed by the court for setting aside the ex parte decree on 31.08.2016 has not been paid and hence the suit does not stand restored. The file was hence directed to be consigned to the record room.

2. The respondent had filed the suit for recovery of Rs.2,72,500/- against the petitioner. It is claimed that the petitioner had approached the respondent for obtaining a loan of Rs.2 lakhs for his business purpose. The petitioner was not served by ordinary process but was served by means of publication in the newspaper. As none appeared despite the publication, the petitioner was proceeded ex parte. The trial court had on an application filed by the petitioner under Order 9 Rule 13 CPC, set aside the ex parte decree subject to payment of costs of Rs. 8,000/-. The matter was thereafter fixed

for 03.11.2016. On that date also, the cost was not paid. Hence, the trial court on 03.11.2016 noted that as the cost has not been paid, the suit does not stand restored.

3. I have heard learned counsel for the petitioner. He submits that the petitioner comes from a very poor background and had difficulty in making the payment of the costs. He, however, submits that the petitioner is now in a position to pay the cost and also to file the written statement.

4. Keeping in view the averments of the learned counsel for the petitioner, in the interest of justice and so as not to defeat the object of the order dated 31.08.2016, the time period for paying the cost is extended up to 30.04.2017. In case the cost is paid to the respondent/counsel for the respondent by 30.04.2017, the suit shall stand revived.

5. The parties to appear before the trial court on 09.05.2017

6. In view of the above, the petition stands disposed of.

7. All pending applications also stand disposed of.

JAYANT NATH, J

APRIL 12, 2017

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