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

+ FAO 141/2016

M/S TRIUMPH MOTORS

..... Appellant

Through: Mr. Bhupesh Narula, Mr. Gaurav
Wadhwa, Advs.

versus

RAJAN SINGH BHATIA & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **03.01.2017**

1. The appellant has challenged the order dated 22nd December, 2014 whereby the learned Trial court dismissed the application for restoration on the ground of delay.
2. The appellant instituted a suit for recovery of Rs.11,16,817/- against the respondents on the ground that the appellant financed a sum of Rs.29,43,085/- to respondent no.1 out of which Rs.11,16,817/- was outstanding and payable. Respondent no.2 is the guarantor of the loan. The appellant suit was dismissed in default on 17th May, 2014. The appellant filed an application for restoration on 12th December, 2014 which was dismissed and is under challenge in this appeal.
3. Learned counsel for the appellant submits that the defendants were proceeded *ex parte* and were not present on 17th May, 2014 as well as 12th December, 2014 before the Trial Court and therefore, notice to respondent no.2 be dispensed with. The notice to respondent no.2 is dispensed with.
4. This Court is satisfied that the appellant has made out a case for restoration of the suit and the learned Trial court erred in not restoring the

appellant's suit which was dismissed in default on 17th May, 2014.

5. The appeal is allowed, the impugned order dated 12th December, 2014 is set aside and the plaintiff's suit is restored to its original number.

6. The appellant shall appear before the Trial Court on 2nd February, 2017.

7. The Trial court shall issue fresh notice to the respondents before proceeding further in this matter.

8. The Trial Court record be returned back forthwith.

J.R. MIDHA, J.

JANUARY 03, 2017

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