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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2218/2012
LAXMI AND MANAGER HOLDINGS LTD Plaintiff
Through: Mr Karan Jain, Advocate.

versus

RESHAM DEVI SURANA Defendant
Through: Mr V. Gandotra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER
% **13.01.2017**

IA No. 24598/2015

1. For the reasons stated in the application, the delay of 30 days in re-filing is condoned.
2. The application stands disposed of.

IA No. 24597/2015

3. This is an application filed on behalf of the defendant, *inter alia*, praying that the decree dated 05.09.2013 be set aside.
4. The learned counsel for the applicant (defendant) has drawn the attention of this Court to paragraph 2 of the order pronounced on 05.09.2013, which indicates that this Court was persuaded to pass a decree on the basis that applicant (defendant) had not entered appearance in the matter.

5. The learned counsel for the applicant (defendant) states that this is erroneous as the defendant had entered appearance within the time prescribed, however, that was not brought to the knowledge of the Court. The learned counsel appearing for non-applicant (plaintiff) states that although the learned counsel for the plaintiff had entered appearance, however, the same was under objection and it was the duty of the learned counsel for the non-applicant/plaintiff to notify the same. He further submits that application filed does not indicate that the claims of the plaintiff is disputed on merits and, therefore, the same ought to be dismissed. He has also relied on the decision of this Court in **Delhi Power Company Ltd. v. Hindustan Vidyut Products Ltd.**: 216 (2015) DLT 181 in support of his contention that the party seeking setting aside of a decree under Order XXXVII Rule 4 is also required to plead the merits of the case besides showing good reason for non-appearance.

6. It is relevant to note that the present case is not one where the plaintiff has not entered appearance in the matter, the defendant had entered appearance and therefore the question of filing a leave to defend would arise at a subsequent stage.

7. Accordingly, the present application is allowed and the decree passed on 05.09.2013 is recalled.

8. The application is disposed of.

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9. It is seen that the amount involved is below the pecuniary jurisdiction

of this Court and accordingly, the petition is required to be transferred to the District Court.

10. In view of this, let the matter be transferred to the Court of the Learned District & Sessions Judge, (Central District), Tis Hazari Court Complex, Delhi.

11. List on 21.03.2017 before the concerned Court.

VIBHU BAKHRU, J

JANUARY 13, 2017
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