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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1659/2015**

M/S STV ENTERPRISES PVT LTD. Petitioner
Through: Mr.Kapil Sankhla, Advocate

versus

M/S SIGMA ELEVATOR CO. & ANR Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **27.11.2017**

None for the respondents, who are indicated to have been served with the notice of the petition, as per the affidavit of service on the record and the as per the tracking report dated 8.9.2015 filed on behalf of the petitioners which indicates the delivery of the notice on 25.8.2015 to the respondents.

The record also indicates as has been submitted on behalf of the petitioners that the appearance had been entered into on behalf of the respondents on 24.2.2016.

Vide the present petition, the petitioner seeks the setting aside of the impugned order dated 21.11.2014 of the learned Metropolitan Magistrate in Complaint No. 49/2/14 and seeks the restoration of the complaint under Section 138 of the Negotiable Instruments Act, submitting to the effect that the matter was at the stage of pre-summoning evidence and summons had been issued for the

appearance of the accused also and the matter has been listed for 6.8.2014 when matter was called but by the time the counsel reached, the matter had already been adjourned after which the date was erroneously written by the counsel as 17.12.2014 when the case has been taken up on 27.8.2014 after 6.8.2014 and 18.9.2014 and thereafter on 21.11.2014 it was dismissed for non-prosecution and non-appearance.

Along with the petition is a photocopy of the diary of the learned counsel for the petitioner in respect of submissions made.

Taking into account the non-opposition on behalf of the respondents who have not chosen to appear despite the service of the notice of the petition and taking into account the factum and that the litigants ought not to suffer due to lapse in noting a date of hearing by the counsel, in the interest of justice, the order dated 21.11.2014 in CC No.49/2/14 is set aside and the complaint is restored to its original stage and number.

The petition is disposed of.

A copy of the order be sent to the learned trial Court.

ANU MALHOTRA, J

NOVEMBER 27, 2017/sv