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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.520/2017
MUKESH SINGHAL Petitioner
Through: Mr. Kuldeep Balhara, Adv.
versus
KALPTARU CERAWARE PRIVATE LIMITED Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 9th February, 2017 of the Court of Additional District Judge-II (North-West), Rohini Court, Delhi in CS DJ No.75221/16 of dismissal for non-prosecution of suit filed by petitioner, for failure to serve the respondent / defendant by publication.
2. The petition came up before this Court first on 9th May, 2017 when it was re-notified for today with a direction to the petitioner / plaintiff to appear in person.
3. The counsel for the petitioner / plaintiff states that the petitioner / plaintiff has gone to Srinagar and has been unable to return and seeks exemption from appearance.
4. The petitioner/plaintiff is exempted from personal appearance.
5. I have perused the paper book and heard the counsel for the petitioner / plaintiff.
6. The petitioner / plaintiff had instituted the suit from which this petition arises for recovery of Rs.59,48,237/- and the counsel for the petitioner / plaintiff on enquiry states that the petitioner/plaintiff had paid

court fees of Rs.60,417/-.

7. Vide order dated 16th October, 2015, on report being received on the summons sent to the respondent / defendant of the respondent/defendant having refused to accept service, the respondent / defendant was ordered to be served by publication.

8. The suit on the following two dates remained under transfer.

9. The petitioner / plaintiff was vide orders dated 27th May, 2016 and 25th October, 2016 given opportunity to have the publication effected and on the petitioner / plaintiff not taking any steps the impugned order followed on 9th February, 2017.

10. Though no fault can be found with the order of the learned Additional District Judge as the petitioner / plaintiff indeed has availed of sufficient opportunities and the Courts cannot keep on giving dates indefinitely but considering the fact that the petitioner / plaintiff has paid substantial court fees and further considering the statement of the counsel for the petitioner / plaintiff that in fact the then counsel for the petitioner / plaintiff failed to communicate the order of publication to the petitioner, it is deemed appropriate to grant yet another opportunity to the petitioner.

11. Considering the facts aforesaid, need to issue notice of this petition to the respondent is not felt.

12. The petition is allowed in the aforesaid terms; subject to the petitioner / plaintiff depositing costs of Rs.10,000/- with Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi within two weeks of today, the order dated 9th February, 2017 is set-aside and the suit is restored to its original position.

13. A copy of this order be immediately sent to the learned Additional District Judge who is requested to call for the file of the suit.

14. The petitioner to appear before the learned Additional District Judge on 8th August, 2017 when on furnishing proof of deposit of costs, the learned Additional District Judge is requested to give one final opportunity to the petitioner to serve the respondent / defendant by publication as ordered.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

JULY 17, 2017

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