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

+ CM(M) 353/2017 & CM Nos.12254-56/2017

M/S BASANT FRUIT CO & ORS Petitioners

Through Mr.Gaurav Arora, Advocate

versus

DINESH PRUTHI Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **28.03.2017**

CM No.12255/2017 (*exemption*)

Allowed subject to all just exceptions.

CM No.1256/2017 (*delay*)

By the present application filed under Section 151 of the CPC, the petitioners seek condonation of delay in re-filing the present petition. For the reasons stated in the application, the same is allowed and the delay in re-filing the present petition is condoned.

CM(M) 353/2017 & CM No.12254/2017 (*stay*)

By the present petition filed under Article 227 of the Constitution of India, the petitioners are aggrieved by the order dated 15.11.2016 passed by the trial court.

In the said impugned order, the trial court has recorded the statement of defendants No.2 and 3 i.e. petitioners No.2 and 3 under Order 10 CPC. However, while recording the statement, said petitioners No.2 and 3 have

been described as partner of M/s Basant Fruit Co., i.e. petitioner No.1.

The grievance of the petitioners is that the said petitioner No.1 is not a partnership concern and is actually under the sole proprietorship concern of petitioner No.2. He relies upon the written statement filed by the said petitioners where the said averment has been made and also relies upon the application of the petitioner under Order 7 Rule 11 CPC where a similar averment has been made.

Keeping in view the trial court has recorded the statement under Order 10 CPC wherein the said petitioners have been described as noted above, it would be appropriate that the petitioners move the trial court by filing an appropriate review petition.

Granting leave and liberty to the petitioners to file review petition, the present petition is dismissed with the aforementioned liberty.

The petitioners shall be entitled to seek benefit of the period spent in pursuing the present remedy for the purpose of limitation in filing the review petition. In case, any such review petition is filed, the trial court may deal with the same as per law. All the pending applications, if any, is dismissed.

JAYANT NATH, J.

MARCH 28, 2017/v