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

+ CM(M) 5/2017 and CM No. 60-61/2017

RAM NIWAS DAGAR & ORS Petitioners
Through Mr.R.S.Rana and Ms.Monika,
Advocates.

versus

RAJBIR SINGH Respondent
Through Mr.Abhimanyu Singh Khatri,
Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.03.2017**

1. By the present petition filed under Article 227 of the Constitution of India the petitioners seek to impugn the order dated 15.10.2015 by which their application for setting aside order dated 22.09.2014 by which order the petitioners were proceeded ex-parte, was dismissed.
2. The respondent has filed the suit for cancellation of sale deed dated 20.08.2001, GPA and Will dated 28.12.1999 and permanent injunction against the petitioners.
3. The case of the petitioner is that the previous counsel had told him not to appear before the court unless told. Neither the petitioner appeared nor the counsel has appeared and that is why, the ex parte order was made.
4. The trial court has noted that petitioner No.2 himself had appeared till 08.11.2013. Despite that, the petitioners failed to lead their evidence despite

several opportunities being given. Further, no action has been taken against the counsel. Accordingly, the trial court dismissed the said application under Order 9 Rule 17 CPC.

5. I have heard learned counsel for the parties.

6. Learned counsel for the respondent has opposed the petition saying that the petitioners claim to have received knowledge of the ex parte proceedings within 10 months of the order dated 22.09.2014. Despite that, they have taken two months to move the present application. It is secondly submitted that the petitioners were appearing in a connected matter but have chosen not to appear in the present petition.

7. The petitioners have given reasons for their non-appearance, namely, that they were advised by the counsel not to appear. It appears that the counsel has also stopped appearing. In my opinion, sufficient grounds have been shown for non-appearance on 22.09.2014 when the petitioners were proceeded ex parte. Accordingly, the impugned order suffers from material irregularity. The same is quashed and the ex parte proceedings against the petitioner are set aside subject to payment of costs of Rs.10,000/-.

8. In view of the above, the petition stands disposed of. All pending applications also stand dismissed.

JAYANT NATH, J

MARCH 10, 2017

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