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

+ CM(M) 1028/2017

FASHION TO FASHION EXPORT'S

..... Petitioner

Through: Mr. Nikhil Malhotra and Mr. Pankaj
Nanda, Advs.

Versus

M.V.M. ENTERPRISES

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.09.2017**

CM No.34015/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1028/2017 & CMs No.34013/2017 (for stay) & 34014/2017 (for condonation of 9 days delay in re-filing)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 21st April, 2017 in M No.47/2016 of the Court of JSCC/ASCJ/G. Judge (North-East), Karkardooma Courts, Delhi] of dismissal of the application filed by the petitioner (defendant in the suit) for review of the judgment dated 16th May, 2016 in S No.104260/2015 (UID No.02402C300442011) of the Court of JSCC/ASCJ/Guardian Judge (North-East), Karkardooma Courts, Delhi decreeing the suit of the respondent against the petitioner for recovery of Rs.55,560/- along with interest.

4. The star argument of the counsel for the petitioner, taken in the memorandum of this petition as well as urged today before this Court, is that the review application was dismissed without even calling for the suit file. However, upon it being enquired from the counsel for the petitioner as to which provision of the Code of Civil Procedure, 1908 or which principle of law requires the Court to call for the records, the counsel is clueless and only urges that without it, the review application cannot be appreciated. Upon it being enquired from the counsel, whether he made any application for calling the suit file, he replies in the affirmative but upon being asked to show the application, states he did not make any application.

5. There is nothing to show that the suit file was not before the Court at the time of considering the review application and no error in the impugned order, from which it can be said that it is owing to the suit file being not before the Court, is pointed out.

6. On enquiry, whether any appeal has been preferred against the decree dated 16th May, 2016, the answer is again in the negative.

7. Supreme Court recently in ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy*** (2016) 14 SCC 238 has held that such petitions, in that case under Section 115 of the CPC impugning only the order refusing to recall the earlier order, without challenging the order sought to be recalled, are not maintainable and the remedy in law is against the order sought to be recalled.

8. The petitioner has admittedly not availed any remedy against the judgment and decree dated 16th May, 2016 and which remedy would also now be barred by time.

9. There is no merit in the petition. The same is dismissed with costs of Rs.10,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

10. List tomorrow i.e. 20th September, 2017, for furnishing proof of payment of costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 19, 2017

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