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

+ CM(M) 184/2017

CAPITAL FIRST LTD Petitioner
Through Mr.Puneet Bhalla, Advocate
versus
YOGESH DIDWANIA & ORS Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **15.02.2017**
CM No.6072/2017

Exemption allowed, subject to all just exceptions.

CM No.6073/2017

For the reasons stated in the application, the same is allowed and the delay of 18 days in re-filing the present petition is condoned.

CM(M) 184/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 29.8.2016 by which the trial court dismissed the suit of the petitioner as none had appeared before the court under Order 10 CPC to make the statement as required.
2. A perusal of the impugned order shows that on 18.5.2016 directions were passed which were not complied with by the petitioner. The trial court noted that instead of elucidating on the matters in controversy or answering on the questions put by this court, the Authorised Representative of the petitioner moved an application for waiver of the costs. The AR was

directed to appear in person. However, despite several dates there is no appearance on his account. Accordingly, under Order 10 Rule 4 (2) CPC the trial court dismissed the suit for non prosecution.

3. Learned counsel appearing for the petitioner states that the facts are clearly stated in the plaint. He, however, submits that the AR would appear before the trial court in case opportunity is granted to the said effect.

4. In the interest of justice and subject to payment of cost already imposed by the trial court, i.e. Rs.2000/-, the suit is restored. Petitioner to appear before the trial court on 10.3.2017. On that date the trial court will fix a specific date for appearance of the AR under Order 10 Rule 2 CPC. No adjournment shall be sought by the petitioner on the date so fixed by the trial court for the appearance of AR in person.

5. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

FEBRUARY 15, 2017

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