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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 192/2017
HARVINDER KAUR & ANR Petitioners
Through: Mr. Ravindra Mohan Aggarwal, Adv.
Versus
SATVINDER KAUR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.08.2017**

CM No.31502/2017 (for exemption)

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

CM No.31503/2017 (for condonation of 6 days delay in re-filing the petition)

3. For the reasons stated, the delay is condoned.
4. The application is disposed of.

C.R.P. 192/2017 & CM No.31501/2017 (for stay)

5. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 impugns the order [dated 16th May, 2017 in M-158589/2016 of the Court of Additional District Judge (ADJ), West District, Tis Hazari Courts, Delhi] allowing the applications of the respondent / plaintiff under Order IX Rule 9 of the CPC and Section 5 of the Limitation Act, 1963 for restoration of the suit for partition dismissed in default of appearance of the respondent / plaintiff on 21st September, 2016 and for condonation of delay in applying therefor.

6. The impugned order accepts the explanation given by the counsel for the respondent / plaintiff that his associate lawyer deputed to attend to the case on 21st September, 2016 could not appear on time and subsequently when appeared, understood that the suit had been adjourned to 24th November, 2016 and it is only when the suit was not found in the cause list of the Court on 24th November, 2016 that the order of dismissal in default of the suit on 21st September, 2016 was discovered and immediately whereafter the application for restoration was filed.

7. The counsel for the petitioner / defendant has argued that the respondent / plaintiff had earlier also successively filed two suits for declaration and permanent injunction with respect to the same property and which were withdrawn and whereafter, without obtaining any leave the subject suit for partition was filed. It is also argued that the respondent / plaintiff has been abusing the process of the Court by repeatedly filing proceedings and /or withdrawing or having the same dismissed and for which reason the respondent / plaintiff was not entitled to any indulgence.

8. This Court at this stage is only concerned with the order dated 16th May, 2017 and if according to the counsel for the petitioner / defendant the suit filed by the respondent / plaintiff is not maintainable for the said reason, it is always open to the petitioner / defendant to urge so before the suit Court.

9. Considering the fact that the suit Court, in the impugned order, has believed the advocate for the respondent / plaintiff who had been appearing before the Suit Court and has restored the suit and which was within the jurisdiction of the Suit Court, no perversity or illegality is found in the impugned order.

10. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 30, 2017

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