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

+ CM(M) 1036/2017

SWARAN & ANR

..... Petitioners

Through: Mr. Varun Goswami, Mr. Rajesh  
Singh and Mr. Sahil Aggarwal, Advs.

versus

INDU WAHI & ORS

..... Respondents

Through: Ms. Syhradha Karol, Adv. for DDA.  
Ms. Vasundhara Nayyar, Adv. for  
R-5.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**30.10.2017**

1. This order is in continuation of the earlier orders dated 18<sup>th</sup> September, 2017 and 21<sup>st</sup> September, 2017.
2. The counsel for the petitioners / plaintiffs states that the copy of the order dated 21<sup>st</sup> September, 2017 was handed over to Shri J.K. Ghahlyan, Advocate and he has in Court handed over a copy of his letter dated 26<sup>th</sup> September, 2017 bearing signatures of some person in acknowledgment of receipt.
3. The counsel for the petitioners / plaintiffs also states that he had personally spoken to Mr. J.K. Ghahlyan, Advocate and though he had assured that he will appear today but has not appeared.
4. Only the counsels for the respondent no.4 Delhi Development Authority (DDA) and respondent no.5 North Delhi Municipal Corporation (NrDMC) appear.
5. Thus nothing has changed from what transpired on 18<sup>th</sup> September, 2017 and 21<sup>st</sup> September, 2017.

6. The counsel for the petitioners / plaintiffs has referred to the dicta of the Supreme Court in **Rafiq Vs. Munshilal** 1981 (3) SCR 509.

7. I have already in the order dated 21<sup>st</sup> September, 2017 reasoned that it is owing to the Courts continuing to be indulgent that the lawyers appear to be taking it for granted that no amount of negligence on their part can make a difference to a litigation and in the name of the litigant not suffering any amount of negligence will be condoned.

8. The duty of the litigant does not come to an end by merely entrusting a case to the Advocate. Reference in this regard can be made to (i) order dated 25<sup>th</sup> July, 2017 in CM(M) No.768/2017 titled **Bimla Vs. Sirajuddin**; and, (ii) order dated 23<sup>rd</sup> August, 2016 in CS(OS) No.435/2000 titled **Tribal Co-operative Marketing Development Federation of India Ltd. Vs. Kishan Industries**. There is absolutely nothing to show what diligence were the petitioners / plaintiffs exercising and what action have they taken against the Advocate. No grievance also has been made to the Advocate. The only inference is that the petitioners / plaintiffs were hand in glove with the Advocate on whom now the blame is sought to be put.

9. The counsel for the petitioners / plaintiffs has also relied on the judgment of the Division Bench of this Court in **Sumitra Parashar Vs. Raj Rani** 213 (2014) DLT 381.

10. More than three years have passed since then also. Unless the Courts put a stop to condoning such negligence, the excellence which ought to be there in the capital city in pursuing the litigation will never be achieved. Merely because in one case default has been set aside would not entitle all defaults to be condoned. There is a difference between legal acumen in

drafting and legal acumen in appearing in the Courts and not allowing litigations to be dismissed in default.

11. For the reasons already recorded in the order dated 18<sup>th</sup> September, 2017, the petition is dismissed.

**RAJIV SAHAI ENDLAW, J**

**OCTOBER 30, 2017'**  
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