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

+ CM(M) 56/2016

M/S CHAMP ENTERPRISES

..... Petitioner

Through: Mr.R.K.Bachchan and Mr.Rajneesh
Tiwari, Advocates.

versus

M/S R K SILK MILLS (INDIA) LIMITED

..... Respondent

Through: Mr.Shiv Khurana, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **08.05.2017**

CM No.2052/2016

1. For the reasons stated in the application, 44 days' delay in filing the petition is condoned.
2. Application is disposed of.

CM(M) 56/2016

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India assailing the order dated 23rd September, 2014 which reads as under:-

'23.09.2014

*Present : None.
Be awaited.*

*Sd/-
ASJ-16 (Central) THC
23.09.2014*

At 12.05 p.m.

*Present : None for the plaintiff.
 Ld. Counsel for the defendant.*

None one is appearing for the plaintiff to lead the evidence since morning despite calls. It is stated by Ld. Counsel for the defendant that he received a telephone call from the Ld. Counsel for the plaintiff that Ld. Counsel for the plaintiff is out of station.

As no witness for the plaintiff is present nor any authorised person is appearing on behalf of plaintiff, the case stands dismissed for non-appearance.

File be consigned to record room after due compliance.

*Sd/-
ASJ-16 (Central) THC
23.09.2014'*

2. The petitioner is aggrieved by the order dated 23rd September, 2014 whereby the suit of the petitioner/plaintiff has been dismissed for non-appearance despite the necessary communication to the learned counsel for the respondent about the inability of the counsel for the petitioner to appear on that date, as well as by the order dated 25th May, 2015 whereby the application seeking recall of the order dated 23rd September, 2014 and restoring the suit to its original number has been dismissed by the learned Trial Court observing that none appeared on 23rd September, 2014 on behalf of the petitioner/plaintiff and there was no explanation why the witness did not appear if the counsel was out of station. Learned Trial Court while observing that there was no sufficient cause shown for non-appearance of the witness, declined the prayer of the petitioner to restore the suit.

3. Heard learned counsel for the parties.
4. With the consent of the parties and especially in view of the fact that counsel for the petitioner/plaintiff was out of station and this fact was not only communicated to the counsel for the respondent/defendant but also informed by learned counsel for the respondent to the learned Trial Court, the petition is allowed subject to the following conditions:-
 - (i) The Civil Suit No.400/14 is restored to its original number subject to payment of cost of Rs.30,000/- by the petitioner/plaintiff to the respondent/defendant.
 - (ii) The cost of Rs.30,000/- is in addition to the cost of Rs.1000/- imposed by the learned Trial Court vide order dated 27th May, 2014.
 - (iii) The total cost of Rs.31,000/- shall be paid by the petitioner/plaintiff to the respondent/defendant within four weeks from the date of this order.
 - (iv) After the cost is paid, only one opportunity shall be granted by the learned Trial Court to the petitioner/plaintiff to lead its evidence.
5. Parties are directed to appear before the learned Trial Court on 10th July, 2017 on which the learned Trial Court shall fix a date for plaintiff's evidence.
6. The petition stand allowed in above terms.
7. It is made clear to the petitioner that if the cost is not paid within the stipulated time, this petition shall stand dismissed.

PRATIBHA RANI, J.

MAY 08, 2017

'st'