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

+ CM(M) 320/2018 & CM APPL.10670/2018

M/S LOHIA WAREHOUSE PVT LTD Petitioner

Through: Mr. Pankaj Mehta, Ms. Snweta Soni,
Mr. R.K. Mehta and Mr. Pramod
Kalirana, Advocates.

versus

PRADEEP GANDOTRA & ANR Respondents

Through: Mr. Vansh Gandotra and Mr. Deepak
Dewan, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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20.04.2018

The petitioner is the defendant in the Civil Suit (Suit No.6820/2016) which was filed by the respondents for relief for possession and recovery of arrears of rent etc. along with *mesne* profits and interest-*pendente lite* and future. The possession of the subject premises has already been handed over by the defendant to the plaintiff and it is only the other issues namely; the recovery of arrears of rent, service tax and *mesne* profits with interest which are pending trial.

The plaintiff had earlier filed an application under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908 which was declined by the trial judge. On FAO No.605/2016, this Court by its judgment dated 18.07.2017 upturned the decision of the trial court and issued appropriate directions under Order XXXIX Rule 10 CPC. The petitioner thereafter came with

Review Petition No.342/2017 which was dismissed vide order dated 25.08.2017 with cost of Rs.15,000/- which were to be deposited with a Government agency. The petitioner did not comply with the said order even though the trial court extended opportunity.

Against the said backdrop, vide order dated 28.11.2017, the trial court directed that the petitioner-defendant was precluded from putting in any further context to the suit. It is the said order which is under challenge by the petition at hand. It has been submitted by counsel that the cost has since been deposited with the appropriate authority.

After some hearing, learned counsel for the respondents submitted though the conduct of the petitioner has not been such where the Court should show indulgence, they do not oppose the prayer made in the petition and concede that the order of the trial court precluding further contest by the petitioner be set aside, the request, however, being that suitable terms be imposed.

Given above facts and circumstances, the prayer is allowed on cost of Rs.25,000/-. The cost shall be paid to the plaintiffs of the case on the next date of hearing fixed before the trial court. Subject to strict compliance being made with these conditions, the impugned order shall stand set aside. For removal of doubts, it is made clear that in the event of any default in tendering the cost on the date mentioned above, the petitioner shall remain precluded from putting in any further request.

The petition and the application filed therewith are disposed of as above.

R.K.GAUBA, J.

APRIL 20, 2018/Rekha
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