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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th February, 2018

+ C.R.P. 147/2016 & CM Nos. 33394-95/2016, 40375/2017

V M SINGH

..... Petitioner

Through: Mr. Arjun Harkauli, Adv.

versus

MADAN LAL MANGOTRA & ORS

..... Respondents

Through: Mr. J.K. Jain & Mr. Rajiv Kr.
Ghawana, Adv. for R-1 to 6.
Ms. Jasmine Damkewala, Adv.
for LR's of R-19.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand seeks to assail the order dated 04.04.2016 passed on the file of miscellaneous case 10792/16/11 whereby the application under Order 9 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) of the first to sixth respondents (collectively, the plaintiffs) for restoration of the civil suit (no. 71/08/94) which was dismissed in default on 19.03.2011, was allowed. The petitioner herein was eighth defendant in the said civil suit and as per his case he being the sole party on the side of defendants putting in contest. The grievance of the petitioner is that while allowing the application for restoration, the Additional District Judge was under the

wrong impression that he (the petitioner) had not filed any reply so as to resist the prayer and, thus, his contentions in the said reply came to be overlooked. The record does show that reply was actually filed by the petitioner contesting the prayer for restoration, he taking up the plea of fraud having been played by the plaintiffs of the suit and it not being a case simply of lapse on the part of the counsel.

2. In the given facts and circumstances, it would be appropriate that the matter is reconsidered by the trial Judge. The impugned order is set aside. The trial court is directed to hear the parties afresh on the application for restoration and pass a fresh order thereupon.

3. The parties are directed to appear before the trial Court for further proceedings in above light on 6th March, 2018.

4. The petition and the applications filed therewith are disposed of in above terms.

5. *Dasti* under the signatures of Court Master.

FEBRUARY 06, 2018

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R.K.GAUBA, J.