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

+ **FAO 111/2015**

PROMILA

..... Appellant

Through: Mr. Mukesh M. Goel, Advocate.

versus

SUBHASH CHAND SHARMA & ORS

..... Respondents

Through: Mr. Ravi Sabharwal, Advocate for
R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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06.03.2018

This appeal impugns an order dated 22.01.2015 dismissing the appellant's application for restoration of the suit which was dismissed in default on 02.01.2014. An application was moved by the plaintiff but the same was neither signed nor supported by her affidavit, instead it was signed by a counsel who had no authority either to sign or to file the same. Especially, as the proxy counsel who appeared on the said date had stated that a counsel who had filed the application had no authority to do so. Hence, it was dismissed on 04.01.2014. Another application was moved on 13.01.2014 under Order 9 Rule 4 CPC for restoration of the suit. It bore the signature of the counsel but his name was not mentioned in the application. It was supported by affidavits of two advocates named in the order. This application too bore the signature of the plaintiff but like the previous application, this one was not supported by her affidavit. Hence, she was directed to appear before the Court on 02.07.2014 to ascertain whether she had signed the document on the said date. She failed to appear, hence, the application was dismissed for non-prosecution. Another application was

filed 22 days later on 24.07.2014 seeking recall of the order passed on 02.07.2014. There was a delay in prosecuting the said application, hence, a cost of Rs. 5,000/- was imposed on 27.08.2014. When she appeared on 18.09.2014, she stated that the application of 08.01.2014 bore her signature at point A but interestingly, she had stated that she had neither met her lawyer nor collected the application from her counsel. The Court compared the said signatures given by the appellant/plaintiff on the said date with her alleged signature on the application and found that both were different. It concluded that the application, not being signed by the appellant could not even be considered. The Court considered the averments in the first and second applications of 04.01.2014 and 13.01.2014. In the first one, the applicant had averred that the default in appearance in the first call was because the proxy counsel had missed the call at 12.00 noon and when he reached the Court at 2.00 pm, he was told that the case had already been dismissed in default. However, the Court had recorded that on 02.01.2014, when the case was called out at 12.20 pm and 12.50 pm and thereafter at 02.05 pm, there was default in appearance, therefore the case was dismissed in default. Strangely, in the application dated 13.01.2014, the reason assigned for non appearance on account of plea that the plaintiff's main counsel was out of the country and grandmother of the junior counsel had passed away, hence, nobody appeared on behalf of the plaintiff. The version in both the applications is entirely different.

The Trial Court having concluded that the purported signature on the application of 04.01.2014 was not hers, would imply that someone had signed on her behalf and claimed it as her signature. This could well warrant further examination.

The learned counsel for the appellant states that the case has been dismissed in default thrice, on 03.05.2010, 02.01.2014 and on 24.07.2014. First on the application dated 04.01.2014 and subsequently on the application dated 13.01.2014. He submits that record of the proceedings show that the suit was never seriously pursued.

However, at this stage, the learned counsel for the appellant states that he would not like to press the appeal.

Accordingly, the appeal is dismissed as not pressed.

NAJMI WAZIRI, J

MARCH 06, 2018

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