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

+ CM(M) 715/2016 & CM No. 26519/2016

NAVEEN CHAUDHARY

..... Petitioner

Through: Mr. Roshan Saini & Ms.Kavita Saini,
Advocates.

versus

MATRIX CELLULAR INTERNATIONAL SERVICE (P) LTD

..... Respondent

Through: Mr. Gautam Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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16.04.2018

The respondent herein had filed a summary suit under Order 37 of the Code of Civil Procedure, 1908 (CPC) on 15.04.2015 against the petitioner for a sum of Rs. 61,661/-. It is stated that the petitioner, as the defendant, had been duly served and had even put in appearance. On 28.08.2015, the counsel representing the respondent/plaintiff made a statement before the trial Court to the effect that the matter had been settled and consequently the suit was being withdrawn. The Civil Judge recorded the said statement and dismissed the suit as withdrawn, it having been settled out of court, directing the Court fee to be refunded. On 01.09.2015, the respondent moved an application for restoration of the suit invoking Order 9 Rule 4 CPC, on the averment that the suit had been “erroneously withdrawn”, on account of

mis-communication between the advocate of the plaintiff company and the plaintiff. The said application was allowed by the Civil Judge by order dated 07.05.2016, *inter alia*, taking note of the reply of the petitioner/defendant resisting the prayer. It is the said order which is challenged by the petition at hand.

The statement made by the counsel before the Civil Judge on 28.08.2015 was clear and categorical to the effect that the matter had been settled out of Court and, therefore, the suit was to be withdrawn. The Court recorded the statement and accepted the prayer dismissing the suit as withdrawn directing the refund even of the Court fees. The application whereby restoration was sought vaguely mentioned withdrawal to be attributable “mis-communication”, there is nothing in the application to clarify as to what was the “communication” which had been misunderstood. In contrast, the petitioner demonstrated before the Civil Judge by averments in the reply and the documents filed therewith that there had indeed been a communication between the parties wherein some amount paid earlier had been adjusted.

The suit once withdrawn and dismissed could not have been restored in the manner done.

The petition is allowed. The impugned order is set aside. The application for restoration stands dismissed.

The petition and the application are disposed of in above terms.

R.K.GAUBA, J.

APRIL 16, 2018

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