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

+ **FAO 3/2015**

ANANTRAJ INDUSTRIES LTD

..... Appellant

Through: Mrs. Biji Rajesh, Advocate.

versus

M/S CERAMIC WORLD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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22.03.2018

This appeal impugns an order dated 05.08.2014 passed by the learned Additional District Judge dismissing the application for recalling the order dated 02.07.2014, whereby the suit had been dismissed on the ground that the petitioner had neither filed any affidavit nor produced any witness. The extension of time was sought on the ground that the witness was unwell. However, the Trial Court was of the view that no medical certificate was filed in this regard. In any case, such ground could not be a ground for non-filing of an affidavit or evidence for the previous six months. It was noted that on 23.04.2014, one last opportunity had been granted to the appellant for filing the affidavit, subject to costs of Rs. 1,000/- to be deposited with the Delhi Legal Service Authority (DLSA) (Central), and even, that cost had not been paid. The Trial Court was of the view that the plaintiff deliberately was delaying the proceedings and no grounds have been made out for adjournment of the case, hence, the suit was dismissed for non-prosecution

on 02.07.2014. The learned counsel for the appellant states that the non-deposition of costs of Rs. 1,000/- with DLSA Fund (Central) was an error and non-filing of the affidavit and evidence may be condoned, subject to such terms, as this Court may impose. She further submits that despite being served through the substituted service by way of publication of notice, the respondent chose not to appear and it was proceeded *ex-parte*. She further states that if the suit is not restored, it will render the appellant remediless. Furthermore, non-submission of the medical certificate of the appellant's witness would not be fatal to the appellant because often people are indisposed not to the extent that would call for their hospitalization or necessarily visit a general physician; such indisposition can be attended to by over-the-counter medication.

In view of the aforesaid circumstances, i.e., that the respondent was proceeded *ex-parte* before the Trial Court as well as this Court and the appellant had been unable to file its affidavit on account of its witness having been fallen ill, the Court is of the view that, in the interest of justice, the impugned order be set aside and the suit be restored, otherwise the appellant would be remediless.

In the circumstances, the impugned order dated 05.08.2014 is set aside. Resultantly, the Civil Suit being no. 127/2012 is restored to its original number and the appellant is permitted to lead evidence by way of an affidavit. The requisite affidavit shall be filed within four weeks from the receipt of copy of this order, subject to payment of costs of Rs. 35,000/- to the DLSA Fund (Central).

List the case before the Trial Court on 24.04.2018, when the appellant shall be duly present.

Lower Court Records be returned.

The appeal stands disposed off in the above terms.

NAJMI WAZIRI, J

MARCH 22, 2018

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