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

Date of decision: 27th August, 2018

+ W.P.(C) 10606/2015

M/S R.K. SOOD ART FRAMERS Petitioner
Through : Mr. R.K. Saini, Adv.

versus

VIPIN SHARMA & ANR Respondents
Through : Ms. Sukriti Ghai for
Mr. Devesh Singh, ASC
(Civil)- GNCTD

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT (ORAL)

1. Owing to the default, committed by its counsel, in appearing before the Authority under the Shops & Establishment Act (hereinafter referred to as the 'Authority'), on 17th October, 2011, 30th November, 2011 and 12th January, 2012, the petitioner suffered an ex-parte order, dated 16th May, 2012, whereby it was directed to pay ₹ 62,700/-, along with penalty of ₹ 100/-, to Respondent No.1, within 30 days of the order.

2. The petitioner moved an application, for setting aside the aforementioned ex-parte order dated 16th May, 2012, expressing regret at the fact that its counsel had not appeared before the Authority on the aforementioned three dates of hearing, contending that, on this account, the petitioner ought not to be made to suffer. As such, it was

prayed that the ex-parte order dated 16th May, 2012, as well as the earlier order dated 12th January, 2012, whereby the petitioner had been required to be proceeded ex-parte be set aside.

3. The application of the petitioner has been dismissed by the Authority. The impugned order dated 15th August, 2014, however, contains only a single sentence, justifying the said dismissal, which reads thus:

“The grounds taken by the respondents are not justified.”

4. To say the least, the manner in which the application of the petitioner, for setting aside the ex-parte order passed against it, has been disposed of by the authority, is highly unsatisfactory.

5. 50% of the amount confirmed against the petitioner by the order dated 16th May, 2012 (*supra*), passed by the petitioner, already stands deposited in the present proceedings.

6. In these circumstances, the order dated 25th August, 2014 (*supra*), passed by the authority, is quashed and set aside.

7. Inasmuch as the ground pleaded by the petitioner, for being unrepresented, on three dates, before the authority, was default on the part of its counsel, I am of the opinion that no purpose would be served in directing the authority to reconsider the application of the petitioner for setting aside the ex parte order. It is trite that an innocent litigant cannot be prejudiced owing to default of its “nocent” counsel, to borrow the words of the inimitable Krishna Iyer, J., in

Miss Santosh Mehta v. Om Prakash and others, (1980) 3 SCC 610,

in which it is held thus:

“To trust one’s advocate is not to sin deliberately. She was innocent but her advocate was nocent. No party can be punished because her advocate behaved unprofessionally.”

8. In the circumstances, I am of the view that, subject to the petitioner depositing costs of ₹ 15,000/- in the Authority within a period of two weeks, the ex-parte order dated 16th May, 2012 as well as the earlier order dated 12th January, 2012, shall stand quashed and set aside. It shall be open to Respondent No. 2 to withdraw the said amount, on making an appropriate application in this regard. Subject to deposit of the aforementioned costs of ₹ 15,000/- within two weeks, the petitioner shall appear before the authority, for *de novo* hearing on merits on 18th September, 2018.

9. The amount of ₹ 31,350/-, deposited by the petitioner in this court pursuant to the directions issued on 17th November, 2015, shall continue to be retained with this court and shall abide by the outcome of the proceedings before the Authority.

10. The writ petition is disposed of in the above terms without any orders as to costs.

C.HARI SHANKAR, J

AUGUST 27, 2018/kr