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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 62/2018 & CM APPL. 1670/2018
M/S TANVI FINLEASE Petitioner
Through Mr. Manu Sisodia, Adv.

versus

ONKAR NATH HANDA & ANR Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **06.03.2019**

The respondents are indicated to have been served through speed post for the date 23.07.2018 as per the report on record and are indicated to have already been represented on 12.11.2018 through the counsel.

Vide order dated 25.02.2019, the petitioner was directed to submit the proceedings sheet of the date 11.09.2018, which apparently is a typographical error and ought to be mentioned as 11.09.2017. The proceedings dated 25.02.2019 are thus rectified in terms of Section 152 of the CPC to be read being the direction for filing of the copy of the order dated 11.09.2017 before the learned Trial Court.

At this stage, learned counsel for the petitioner has now submitted the copy of the order dated 11.09.2017 of the Trial Court of the learned Civil Judge-01, West, Delhi in SCJ No. 607671/2016 through which it is indicated that the suit had been received by way of transfer from another Court in

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terms of the circular No. 848/26468-26502/Cases Transfer /Gaz./DJ West, dated 08.09.2017 and that the matter was not represented on behalf of the plaintiff and that the defendants were represented by the counsel alongwith the defendant no. 1 and the matter was renotified for further proceedings for the date 22.11.2017. On the date 22.11.2017, there was no representation on behalf of the plaintiff and the defendants to the suit i.e. the respondents herein were represented by the counsel alongwith the defendant no. 1. It has also been observed vide order dated 22.11.2017 by the learned Trial Court that there was none present on behalf of the plaintiff on the last date of hearing i.e. on 11.09.2017 nor was anyone present on 22.11.2017 and the right to cross-examine the DW1 was thus closed and that vide separate statement the defendant evidence was also closed and the matter was renotified for final arguments for 13.12.2017.

Vide the impugned order dated 06.01.2018, the learned Trial Court had declined the application under Section 151 of the CPC filed by the plaintiff i.e. the petitioner herein seeking permission to cross-examine the witness DW1. The impugned order observes to the effect : -

“Perusal of the record shows that on 22.11.2017 none was present on the side of the plaintiff. Prior to that also on 11.09.2017 there was no representation from the side of the plaintiff. It is orally submitted by the Ld. Counsel for the Plaintiff that on the last date of hearing, proxy counsel was available but subsequently he had to leave, as he was not feeling well. Perusal of the record further shows that there is no presence of any proxy counsel marked on the order sheet dated 22.11.2017 and 11.09.2017 from the side of the plaintiff. Thus, the submissions made are contrary to the judicial record and not in sync with the order-sheets of the said dates. Neither

there was any presence of the proxy counsel on 11.09.2017 nor there was any presence or Proxy Counsel on 22.11.2017. Even the Plaintiff was not present in the court- on the earlier two dates of hearing to apprise the court regarding the non presence of the counsel.

Thus, on the basis of the above observation the court is of the opinion that no sufficient ground has been made out for allowing the present application. Plaintiff has not been diligent in prosecuting the present matter and despite opportunity none was present since last two consecutive date from the side of the plaintiff. Hence, the present application stands dismissed.”

Undoubtedly there was no presence on 11.09.2017 on behalf of the plaintiff nor on the date 22.11.2017, however, the proceedings sheet of the date 11.09.2017, copy of which has now been submitted on behalf of the appellant, indicate that the suit was received by way of transfer from another Court and the matter having been renotified for further proceedings and not having been categorically fixed for any evidence to be recorded on 22.11.2017, it is thus considered appropriate in the interest of justice that the plaintiff of the suit bearing SCJ No. 607671/2016 pending before the learned Civil Judge-01, West is granted one single opportunity for cross-examination of DW1 subject to costs of Rs.25,000/- to be paid to the defendants i.e. the respondents herein on the date 11.03.2019 for which date the matter is stated to be fixed before the learned Trial Court.

Copy of the order be sent to the learned Trial Court.

ANU MALHOTRA, J

MARCH 06, 2019/MK