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

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Date of Order: 21.01.2019

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C.R.P. No.65/2018

MUSTAQUEEM & ORS

..... Petitioners

Through: Mr. J.H. Jafri, Advocate.

Versus

FAIYAZ @ FAIZAB & ANR

....Respondents

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned order dated 16.12.2017 passed by the court of learned Civil Judge-02, Central District, Tis Hazari Courts, Delhi, in Old M. No.33/16 (New M. No.60803/16), by which the application of the respondent/defendant under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the *ex- parte* judgment and decree dated 24.03.2015 passed in the Civil Suit No.87/14 titled as *Mustaqueem & Ors. Vs. Faiyaz @ Faizab & Anr.* was allowed, is the subject-matter of challenge in this revision petition.

2. By the impugned order, the learned Civil Judge was pleased to set aside the *ex-parte* judgment and decree dated 24.03.2015 subject to payment of Rs.10,000/- as cost.

3. During the course of his submissions, Mr. Jafri, learned counsel for the petitioners has admitted that cost of Rs.10,000/-, subject to

which the *ex-parte* judgment and decree was set aside, was accepted by the learned counsel appearing for the petitioners/plaintiffs.

4. The petitioners cannot “blow hot and cold”, “fast and loose” or “approve and reprobate”. Where the petitioners have knowingly accepted the benefits of an order, they cannot be permitted to assail the same. This rule is applied to do equity. Therefore, in this case where the petitioners have already accepted the cost, they are estopped by their act, conduct and acquiescence to continue the present petition.

5. In the circumstances, nothing survives in the present revision petition since the cost has been accepted by the petitioners/plaintiffs. As such, the revision petition is dismissed.

JANUARY 21, 2019
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(VINOD GOEL)
JUDGE