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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 511/2018 & CM APPL. 18076/2018
MOHD SHARIQ & ANR Petitioner
Through Mr. Om Prakash, Adv.

versus

MOHD AFZAL @ CHAND & ORS Respondent
Through Mr. Sahil Khan, Adv. for R1 & R2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **14.01.2019**

The respondents no. 3, 4 & 5 have already been served and are indicated to be arrayed as proforma parties.

Reply on behalf of the respondents no. 1 & 2 opposing the petition is on the record.

Submissions made on behalf of either side.

The petitioner assails the impugned order dated 09.02.2018 of the learned JSCC/ASCJ/GJ (Shahdara), KKD, Delhi vide which the prayer made by the petitioner seeking recalling of the ex-parte proceedings initiated against the petitioners vide order dated 21.04.2017 was declined, it having being held that the application was belated and no plausible explanation had been given by the applicants for their absence on 21.04.2017.

Through the petition and through the submissions made, it has been submitted on behalf of the petitioners that the petitioners learnt of the

present proceedings on 04.09.2017 when they were informed by one Mohd. Layque, a neighbour, that the plaintiff i.e. the respondent to the present petition had filed a case against the petitioners in the Karkardooma Courts, Delhi and that on 05.09.2017, the defendants i.e. the petitioners thus contacted their counsel and learnt of the pendency of the present case and thereafter they moved an application seeking inspection on 06.09.2017 and only then they learnt of the ex-parte proceedings and that the right to file written statement had been closed. It was also submitted on behalf of the petitioners that though the counsel appeared on 23.02.2017 but the appearance was put forth only in relation to the defendant no. 2 and not for all the other defendants and that the summons were received by Mohd. Irshad with whom the other brothers did not have good relationship.

On behalf of the respondents no. 1 & 2, the petition has been vehemently opposed submitting to the effect that the service having been effected through Mohd. Irshad, one of the family members of the petitioners in terms of Order 5 CPC it was a complete service and that there is no merit in the prayer made by the petitioners.

It has been submitted on behalf of the petitioners that the relationship between the petitioners and the respondent no. 5 Mohd. Irshad with whom they were served are not cordial and thus the vakalatnama was filed on behalf of the respondent Mohd. Irshad and not on behalf of the petitioners in the course of the proceedings before the learned Trial Court.

Taking into account the submissions made in the petition and the factum that there was no authorization filed on behalf of the petitioners

despite the factum that Mohd. Irshad i.e. the respondent no. 5 to the present petition was represented before the learned Trial Court pursuant to the service having been effect on 16.01.2017, it is considered appropriate in the interest of justice to set aside the ex-parte proceedings initiated against the petitioners vide proceedings dated 21.04.2017 subject to payment of composite costs of Rs.30,000/- by the petitioners no. 1 & 2 to the respondents no. 1 & 2 and subject to the payment of the said costs on 17.01.2019 by the petitioners to the respondents no. 1 & 2 before the learned Trial Court, the ex-parte proceedings against the petitioners would be set aside with the directions to the learned Trial Court to proceed further in accordance with law.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 14, 2019/MK