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

+ C.R.P. 112/2018

CENTER FOR DEVELOPMENT STUDIES &
ACTIVITIES (CDSA)

..... Petitioner

Through: Ms Neela Gokhale and Mr Ilam
Paridi, Advocates.

versus

INDIAN HABITAT CENTER & ANR

..... Respondents

Through: Mr Ashok Mathur, Ms Priyanjali
Yadav, Mr Anurag Chaudhary and
Mr Saurabh Jain, Advocates for R-1.
Mr Ajay Digpaul, CGSC with Mr
Soumava Karmakar, Advocate for R-
2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.08.2019

1. The petitioner has filed the present petition impugning an order dated 16.02.2018 passed by the ADJ in M.C.A No. 06/2017, titled as “*Centre for Development Studies & Activities v. Indian Habitat Centre*”, whereby the petitioner’s appeal against an order dated 16.12.2016, passed by the learned Trial Court, was rejected.
2. By the order dated 16.12.2016, the Trial Court had disposed of the application filed by the petitioner under Order IX Rule 9 of the Code of Civil Procedure, 1908 (CPC) declining to restore the petitioner’s suit which was dismissed for non-appearance of the learned counsel for the petitioner.
3. The Trial Court had noted that the plaintiff had failed to appear on several dates, and adjournments had been sought by the proxy counsel on

behalf of the plaintiff (petitioner herein) on four previous dates. The plaintiff (petitioner herein) was also directed to pay costs of ₹10,000/- which was paid *albeit* with some delay. The said order indicates that on 08.03.2016, the matter was repeatedly called but since none had appeared on behalf of the plaintiff, the suit was dismissed. The Court had also noticed that the petitioner's application for restoration of the suit was not supported by an affidavit clearly stating the grounds on which the application was based.

4. It is the plaintiff's case that the clerk of its counsel had noted an incorrect date of hearing (he had noted the date of 09.03.2016 instead of 08.03.2016). The Trial Court noted that the said application was filed by the counsel and was neither signed by the plaintiff nor supported by any affidavit.

5. The petitioner preferred an appeal against the said decision before the learned ADJ. However, the same was also dismissed on, essentially, two grounds. First, on account of delay as the appeal was delayed by a period of 10 days. Second, that the appellate court also noticed that the plaintiff had been lackadaisical in pursuing the matter and the counsel had not appeared on several occasions prior to the dismissal of the suit on 08.03.2016. The learned ADJ was also persuaded not to interfere with the order dated 16.02.2016 by the fact that the application, under Order IX Rule 9 of the CPC, was filed by the plaintiff's counsel and not by the plaintiff.

6. At the outset, the learned counsel appearing for the petitioner volunteers that the petitioner shall pay an exemplary cost of ₹50,000/- for the delay on its part in pursuing the matter and he further states that if the suit is restored, the plaintiff shall ensure that no adjournments are sought on

its behalf.

7. Mr Mathur, learned counsel appearing for the respondent points out that the appeal filed by the petitioner was also delayed. However, given the statement made by the learned counsel appearing for the petitioner, this Court is of the view that the right of the petitioner to pursue the suit ought not to be defeated on account of the conduct of its counsel.

8. In view of the above, this Court accepts the statement made by the learned counsel appearing for the petitioner.

9. Accordingly, the impugned order dated 16.02.2018, as well as the order dismissing the suit on 08.03.2016 are set aside, subject to the petitioner making a payment of ₹50,000/- to the learned counsel appearing for the respondent within a period of two weeks, from today. This is also subject to the condition that the petitioner shall not seek any further adjournment before the learned Trial court.

10. The suit is restored to the position as obtaining as on 08.03.2016. The petition is disposed of.

AUGUST 22, 2019
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VIBHU BAKHRU, J