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

% Judgment delivered on: 15.10.2019
+ C.R.P. 135/2018

M/S OLIVE GREEN FARMS PVT LTD Petitioner

versus

VIKRANT SETH & ANR Respondents

Advocates who appeared in this case:

For the Petitioner: Mr.Sameer Dewan, Advocate.

For the Respondent: Mr.Rishab Raj Jain, Advocate for R-1.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Order dated 10.12.2018 records that despite service none has been appearing for respondent No.2. Even today none is present on behalf of respondent No.2.
2. Accordingly, respondent No.2 is proceeded ex-parte.
3. Petitioner impugns order dated 08.05.2018 whereby the suit of the petitioner has been dismissed for non-prosecution.
4. Order dated 08.05.2018 records that adjournments were being sought by the plaintiff and it appeared that plaintiff was not interested in pursuing the suit.

5. Learned counsel for the petitioner submits that the petitioner/plaintiff was diligently prosecuting the suit, however, on 08.05.2018, the counsel suddenly fell ill and an adjournment was sought on the ground that the counsel was unwell, however, the Court without considering the ground mentioned in the application has dismissed the Suit for no prosecution.
6. Learned counsel appearing for the respondent No.1 submits that it was the third date on which an adjournment was being sought.
7. Perusal of the order sheet shows that on one date the Petitioner had sought for an adjournment on the ground that elections of the State Bar Council were underway and on the second there was a call for abstinence from the Bar and counsel could not appear.
8. The application for adjournment also shows that the same is signed by the Advocate stating that he is unwell. The Advocate who had filed the application is also the counsel representing the respondent in these proceedings and he submits at the bar that he was actually unwell on the said date.
9. In the facts and circumstances of the case, I am satisfied that the adjournment sought on 08.05.2018 was on valid grounds and petitioner has given sufficient explanation for seeking an adjournment.
10. I am satisfied that the explanation rendered by the counsel is bonafide and the Trial Court has clearly erred in holding that the petitioner as not interested in prosecuting the Suit.
11. Consequently, the impugned order dated 08.05.2018 is set aside. The

suit is restored to its original number.

12. Parties shall appear before the Trial Court on 18.11.2019. Trial Court shall issue fresh notice to respondent No.2/defendant No.2 prior to proceedings further with the matter.

13. It is informed by learned counsel for the respondent No.1 that proceedings were at the stage of arguments on maintainability of the Suit as noted by the Trial Court in its order dated 28.10.2017. The Trial Court shall expedite the hearing on the question of maintainability of the Suit as noted by the Trial Court in its order dated 28.10.2017.

14. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 15, 2019/rk

