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

+ **CS(OS) 2690/2014**

M/S DIVINE AUTOMOBILE PVT LTD & ANR Plaintiffs
Through: None.

versus

M/S KAPOOR SONS & CO & ORS Defendants
Through: Mr. Anil Sharma & Mr.Sahil
Batar, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
28.02.2020

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1. By the order dated 10.01.2020, it was directed as follows:-

“1. The plaintiffs have remained unrepresented for the last four hearings.

2. In the interest of justice, the matter is adjourned to 28.02.2020.

3. It is made clear that if the plaintiffs remain unrepresented on the next date of hearing, the suit will be liable to be dismissed in default, and they will also be liable to be set ex parte in the counter claim.

4. Learned counsel for the defendants shall communicate this order to learned counsel whose Vakalatnama is on record on behalf of the plaintiffs, as well as to the plaintiffs at the address mentioned in the memo of parties. Learned counsel for the defendants shall file an affidavit of service before the next date of hearing.”

2. Pursuant to the said order, learned counsel for the defendant has placed on record an affidavit dated 04.02.2020, which discloses that he has served a copy of the order on learned counsel on record for the plaintiff as well as on the plaintiff. The tracking delivery report at the addresses of counsel of plaintiff as well as the plaintiff has been annexed.
3. Despite, notice there is no appearance on behalf of the plaintiff.
4. In these circumstances, the suit is dismissed for non-prosecution.

CC 2/2015 & CC 6/2015

1. In view of the facts mentioned above, the plaintiffs are set *ex-parte* in the counter claims. The Registry is directed to number the counter-claims as independent suits.
2. The defendants/counter-claimants will file affidavit(s) of evidence of their witnesses within four weeks.
3. Learned counsel for the defendants/counter claimants seeks appointment of a local commissioner for the recording of the evidence. Learned counsel for the defendants/counter claimants state that two witnesses will be produced before the local commissioner. However, it is stated that in view of the fact that the counter claims are uncontested, the evidence is likely to be concluded in one session.
4. Ms. Aagam Kaur, Advocate (Mobile:- 9899859548) is appointed as the Local Commissioner to record evidence in these proceedings. The expenses for the commission shall be borne by defendants/counter claimants at the first instance, subject to final orders of costs. The fees of the Local Commissioner is fixed at ₹ 40,000/-, in addition to the out of pocket expenses.

5. Learned counsel will coordinate with the Local Commissioner for fixing a date for commencing of the evidence. The Commissioner is requested to record evidence within the premises of this Court. The Registry is directed to make the suit record available at the place and time fixed by the Commissioner for recording of evidence.
6. The Commissioner will be at liberty to have the matter placed before the Court if any other directions are required.
7. List on 06.07.2020.

PRATEEK JALAN, J

FEBRUARY 28, 2020

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