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

+ **CM (M) 1347/2018**

CAPITAL LAND BUILDERS PVT. LTD. & ANR. Petitioners
Through: Mr. Vineet Jhanji and Mr Imran
Moulaey, Advocates.
(M:9811191912)

versus

AJAY YADAV & ORS. Respondents
Through: Mr. Ashish Mohan, Mr. Arjun
Choudhary and Mr. Mohit Kumar,
Advocates for R-1 & 2.
(M:882601170)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **18.02.2020**

1. This petition challenges the impugned order dated 3rd August, 2016 as also the order dated 26th July, 2018. Vide the order dated 3rd August, 2016, the suit was dismissed in default for non-prosecution as the counsel had not appeared. An application was then moved for restoration of the suit, which was rejected vide order dated 26th July, 2018.
2. The suit was originally instituted before the Delhi High Court in October, 2006. Due to increase in the pecuniary jurisdiction of the High Court, the suit was transferred along with other 29 suits to the District Court vide the order dated 6th May, 2016. There were various litigations pending between the parties in other District Courts – primarily in the District Court (Shahdara) Karkardooma Courts owing to the fact that the land in question was located in Shahdara. This suit was however transferred to the North East

District in Karkardooma Courts. Upon transfer, on 1st June, 2016, the Petitioners/Plaintiffs (*hereinafter* 'Plaintiffs') moved an application seeking transfer of the suit to the Shahdara District. The said application was pending and during the pendency of the said application, on 3rd August, 2016 since the counsel for the Plaintiffs did not appear, the impugned order dismissing the suit, came to be passed. After a delay of more than one and a half years, the application under Order IX Rule 4 CPC was filed. The ground raised in the said application was that there were 30 suits, which were transferred together and there was some confusion as new counsels was engaged. The knowledge of the dismissal was acquired much later and, on this ground, restoration of the suit was sought. The Trial Court has dismissed the application on 26th July 2018, primarily on the ground that the application is barred by limitation and no application for condonation of delay was filed.

3. A perusal of the record shows that after the transfer of the suit from the High Court on 6th May, 2016, within a period of three months i.e. on the second date of hearing before the Court itself, the suit was dismissed for non-prosecution. There is no dispute as to the fact that there were a total of 30 cases which were transferred from the High Court to the District Court. Under such circumstances, the explanation that there was confusion as to the District to which the suit was marked and hence the same led to non-appearance, cannot be doubted. There is no doubt that the Plaintiffs moved an application for consolidation of the present suit with the other suits, which was pending at the time when the dismissal took place.

4. Considering that the suit relates to valuable property and seeks declaration and injunction, this Court is inclined to restore the suit subject to

payment of Rs.1 lakh to be paid to the Respondents/Defendants. Further, considering the fact that there are other suits pending in other District Courts, the present suit shall now be heard along with suit nos. 2107-09/2016, 2456-59/2016 etc. pending before Ms. Smita Garg, ADJ, Shahdara, Karkardooma Courts. Costs shall be paid within a period of four weeks from today. Copy of this order be sent to the ADJ – Mr. G.N Pandey, N.E. District, Karkardooma Courts before whom Misc. DJ. No.102/2018 is pending, so that the file can be transmitted to the ADJ (Shahdara), Karkardooma Courts.

5. The present petition is disposed of in these terms. Pending applications are also disposed of.

PRATHIBA M. SINGH, J

FEBRUARY 18, 2020/dk