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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 01st July, 2024***

+ CM(M) 2114/2024

PINKY KAUR & ORS. Petitioners

Through Mr. Sahil Sharma with Ms. Grisha
Sharma, Advocates.
versus

MOHIT SHUKLA Respondent
Through Mr. Kuljeet Singh Sachdeva with
Mr. Rakesh Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)
CM APPL. 35615/2024 (exemption)

Exemption allowed subject to all just exceptions.

CM APPL. 35613/2024 (for preponement), CM APPL. 35614/2024
(for stay) & CM(M) 2114/2024

1. Petitioners herein are defendants before the learned Trial Court and by virtue of present petition moved under Article 227 of the Constitution of India, they have, primarily, sought quashing of order dated 08.02.2024 whereby their application moved under Order IX Rule 7 CPC for setting aside the ex-parte order has been dismissed for non-appearance and for non-prosecution.

2. During course of the arguments, learned counsel for the petitioners has, very fairly, admitted that by invoking the relevant provisions prescribed under Order IX CPC read with Section 141



CPC, the petitioners (the defendants in the original suit) could have also moved an application before the Ld. Trial Court seeking recall of said order but the same was not contemplated.

3. During course of the arguments, learned counsel for the petitioners stated that he would not press the present petition if this Court permits him one opportunity to move such application before the Ld. Trial Court.

4. It is submitted by learned counsel for the petitioners that there is no intention, whatsoever, to delay the matter and if permitted, he would file the application within the time to be stipulated by this Court.

5. Though, the petitioners should have been diligent in the first instance and should have, without seeking any permission from this Court, had moved appropriate application, keeping in mind the overall facts and circumstances of the case and with the consent of both the sides, the present petition is disposed of with the following directions:-

- (i) Petitioners, i.e., the defendants in CS SCJ 443/2022 titled Mohit Shukla Vs. Pinki Kaur are permitted to file appropriate application seeking recall of order dated 08.02.2024.
- (ii) Such application be moved within three days from today, i.e., on or before 04.07.2024, with advance copy to learned counsel for the opposite side.
- (iii) Learned Trial Court would make best endeavour to expedite



disposal of such application in accordance with law.

(iv) Needless to say, in case such application does not find favour with the learned Trial Court, it would be at liberty to hear final arguments and to pronounce judgment.

6. Petition stands disposed of in the aforesaid terms.

7. Before parting, it is clarified that this Court has not made any observation regarding the merits of the case and, therefore, the learned Trial Court would not get swayed by the observations made in the present order.

8. The next date of 16.08.2024 stands cancelled.

9. Order *Dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 01, 2024
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