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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 09th April, 2025**

+ CM(M) 565/2025 & CM APPL. 17618-17621/2025

RESURGENT CONSTRUCTION PVT. LTD. & ANR.

.....Petitioner

Through: Mr. Anupam Dwivedi and Mr. Umesh
Dubey, Advocates

versus

STRUM BUILDCON PVT. LTD. & ANR.

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

CM APPL. 17619-17620/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 565/2025 & CM APPL. 17618/2025 & CM APPL. 17621/2025

1. None appears on behalf of the respondent despite advance notice.
2. The grievance of the petitioner is very short and precise.
3. Petitioner is defending a suit for recovery.
4. During pendency of the aforesaid suit, it was proceeded against *ex parte* and its one application moved under Order VII Rule 10 CPC was also dismissed.
5. Petitioner/defendant moved separate applications before the learned Trial Court. By virtue of first application, he sought setting aside of *ex parte* order, for which the relief has been granted to him by the learned Trial Court. However, with respect to the second application, whereby he was seeking restoration of its application moved under Order VII Rule 10 CPC, such



request has been turned down for the reasons that such request cannot be entertained by moving an application under Order IX Rule 7 CPC.

6. Learned counsel for the petitioner does admit that application had been moved under the wrong provision. He submits that earlier when the application moved under Order VII Rule 10 CPC was taken up by the learned Trial Court on 06.07.2022, there was no appearance from either of the sides and, the learned Trial Court, while noticing the conduct of the defendant, dismissed the aforesaid application. Such dismissal is not on merits and rather it's a *default-dismissal* and, therefore, the petitioner should have moved application under appropriate provisions, seeking restoration of his application.

7. Be that as it may, the Court can always, whenever so required, correct and guide any such litigant and can still consider any such application, even if it mentions a wrong provision of law. For all practical purposes, the aforesaid application was seeking restoration of its previous application moved under Order VII Rule 10 CPC which had, ostensibly, dismissed in default and non-prosecution.

8. Therefore, the present petition is disposed of by requesting the learned Trial Court to consider the aforesaid application as the one moved under Order IX CPC r/w Section 151 & 141 CPC and, after hearing both the sides, to decide the same in accordance with law.

9. Petition, along with all the pending applications, stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 9, 2025/dr/pb