MISC No. 183/19

MEENA Vs. STATE

17.08.2019

Present: Ld. Counsel for petitioner.

Ld. Proxy counsel for respondent -MCD.

Reply on behalf of respondent/MCD filed under Order 9 Rule 9 CPC. Taken on record. Copy supplied.

Vide this order I shall decide application under Order 9 Rule 9 CPC for setting aside the order dated 19.02.2019 whereby the suit of the plaintiff was dismissed.

It is stated in the application that on 18.01.2019 the Ld. Presiding officer was on leave and the plaintiff's son who appeared in person noted the date of hearing 20.02.2019 instead of 19.02.2019. The photocopy of the relevant page of the diary of the counsel was also attached. It is stated that when the plaintiff appeared on 20.02.2019, it was revealed that the suit was dismissed for non appearance on 19.02.2019. In reply the defendant has argued that the application is time barred and the plaintiff has failed to mention sufficient ground for restoration of suit. It is submitted that the applicant has not filed affidavit of her son in this regard. Hence, the application has no merit.

Arguments heard. Record perused.

Perusal of the record shows that plaintiff and his counsel has been appearing regularly to the court. The application is not

barred by limitation since it has been filed on 11.03.2019 I.e. within a month of dismissal of suit for non appearance. Since, there was default of only one date and same has been stated due to wrong noting of the date by the son of plaintiff, the application is allowed. However, the application is allowed only subject to cost of Rs. 1,000/- to be paid to the defendant as due to default on the part of plaintiff, substantial time of the opposite party as well as of the court has been wasted.

Suit is of the plaintiff be restored to its original number.

Application under Order 9 Rule 9 CPC be tagged with main file.

Be put up on 05.02.2020.

(ANKIT SINGLA)
ASCJ (Central)/Delhi
17.08.2019