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

+ CM(M) 1403/2022

MONIKA SINGH

..... Petitioner

Through: Mr. Nishant Datta and Mr. Pradeep
Bhardwaj, Advocates

versus

CHANDA DEVI & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

14.12.2022

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[The proceeding has been conducted through Hybrid mode]

C.M. No. 54077/2022 (Exemption)

1. Allowed subject to all just exceptions.

CM(M) 1403/2022 and CM No.54078/2022 (stay)

2. Learned counsel submits that before the impugned order was passed, vide order dated 24.02.2020, learned Trial Court had closed the plaintiff evidence and kept the matter for Defendant's evidence and subsequently for final arguments. Learned counsel submits that on 23.04.2022, the subject suit was dismissed for non-prosecution.

3. Learned counsel relies upon Order IX Rule 9(2) of CPC, 1908 to submit that it was incumbent upon the learned Trial Court to issue notice before any order is passed thereon.

CM(M) 1403/2022

page 1 of 2



4. From a perusal of the impugned order dated 06.08.2022 placed at page 25 of the paper book, it is apparent that no notice before considering the application seeking restoration nor notice of the application seeking condonation of delay in filing the restoration application was ever issued to the Petitioner herein and in the absence of the Petitioner, who is the Defendant before the learned Trial Court, impugned order was passed.
5. It is also apparent that no reasons have been recorded by the learned Trial Court for having condoned the delay.
6. Issue notice to the Respondents through all prescribed modes, returnable on 24.07.2023.
7. The learned Trial Court is directed to defer the proceedings fixed for 17.12.2022 to a date beyond the date fixed by this Court.

TUSHAR RAO GEDELA, J

DECEMBER 14, 2022

Yg

CM(M) 1403/2022

page 2 of 2