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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 24th March, 2025**

+ CM(M) 1812/2019 & CM APPL. 15410/2023

SAVERA REALTY PVT LTDPetitioner

Through: Mr. Ashish Aggarwal, Mr. Himanshu
Singh and Ms. Lisha Arora,
Advocates.

versus

SABYASACHI CHAKORBORTYRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Respondent herein has been served through publication and the publication was carried out in Newspapers 'Vir Arjun' and 'Statesman' dated 30.06.2023.
2. Despite such deemed service, there is no representation from the side of respondent/judgment debtor.
3. The issue raised in the present petition is a very short one.
4. The petitioner had a decree in its favour and had filed an execution petition which was registered as Ex. No.203/2017. When such execution petition was taken up by the learned Executing Court on 27.10.2017, noticing that no one had appeared on behalf of the decree holder, it dismissed the execution petition in default.
5. In order to get its execution petition restored, the decree-holder filed an application under Order IX Rule 4 CPC read with Section 151 CPC. Such application was taken up by the learned Trial Court on 21.05.2019 but finding that the main counsel had not appeared and only a proxy counsel had appeared before it, it dismissed the abovesaid application for



non-prosecution.

6. Such order dated 21.05.2019 is under challenge.

7. Needless to say, the emphasis should always be on deciding the case on merits, instead of on technicalities.

8. Of course, it is also imperative for any such applicant to ensure that requisite cooperation and assistance is provided to the Court. However, since proxy counsel for the decree-holder had appeared before the Court, the Trial Court should not have dismissed the application moved under Order IX Rule 4 CPC for *non-prosecution* and should have adjourned the matter, *albeit* on certain conditions.

9. This Court is also mindful of the fact that there is no resistance to the present petition, as despite publication, no one has appeared on behalf of the respondent.

10. Keeping in mind the overall facts and circumstances of the case, while allowing the petition, the order dated 21.05.2019 is set aside to the extent it dismisses the restoration application for non-prosecution.

11. In view of above, the learned Execution Court would take up the abovesaid application filed under Order IX Rule 4 CPC and would dispose of the same, in accordance with law.

12. The petition stands disposed of in aforesaid terms.

**(MANOJ JAIN)
JUDGE**

MARCH 24, 2025/ss/pb