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% 30.11.2009

Present : Mr. V.P. Singh, Senior Advocate, with Mr. H.L. Agarwala, Mr. Manoj Swarup, Mr. K.N. Sharma, Advocates for Appellant
Mr. Sanjay Jain, Senior Advocate, with Mr. Sunil Aggarwal, Mr. S.D. Sharma, Mr. Sarfraj Ahmed, Advocates for Respondent along with Mr. Shishir Agarwal, Director of Respondent.

+ **C.M. No. 15568/2009**
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Learned Counsel for the Applicant seeks leave to withdraw the application.

Dismissed, as withdrawn.

R.F.A. (OS) No. 78/2009 & C.M. No. 13812/2009

Mr. Jain, learned Senior Counsel for the Respondent, on instructions, states that in order to expedite the final hearing in the suit and not to run the risk of suit being remanded after a considerable period of time, the impugned Order may be set aside.

Ordered accordingly.

We note that Issues have not been framed because

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Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

the suit was decreed immediately after the recording of the

Statement of Authorised Representative of the Defendant company under Order X Rule 2 of the CPC.

Mr. Jain states that depending upon the placing of the onus *probandi* in the Issues, which may be fixed, it is likely that the plaintiff may be required to lead evidence only in rebuttal.

In these circumstances, the impugned Order is set aside. We request the learned Single Judge to expedite the hearing of the suit.

Mr. Singh, Senior Counsel for the Appellant, states that the Appellant shall continue to pay a sum of Rupees Eighteen Lacs and Fifty Thousand, per month, as last paid.

The Appellant has deposited a sum of Rupees Four Crores which stands invested in Fixed Deposits by the Registrar General of this Court.

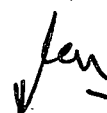
So far as this sum is concerned, we direct that it will be refunded to the Appellant after thirty days from today, in order to enable the Appellant to initiate appropriate motion before the learned Single Judge, unless the learned Single Judge passes Orders to the contrary, especially in view of the judgement delivered on November 27, 2009, in FAO (OS) No.

252 of 2008, in *"Mohan Overseas P. Ltd. v. Goyal Tin & General Industries"*.

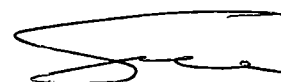
List on 7th December, 2009, before the learned Single Judge.

This Appeal and pending Application is allowed in the above terms.

Dasti.



VIKRAMAJIT SEN, J.



SUNIL GAUR, J.

November 30, 2009

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