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

+ CM(M) 640/2016

WHITEFIELD OVERSEAS PRIVATE LTD Petitioner
Through Mr.Ashish Kapu and Ms.Chhavi
Luthra, Advocates.

versus

BRIJENDER CHAUHAN Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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11.07.2016

CM Appl. Nos. 23944-945/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 640/2016

The present petition is filed seeking to impugn the order dated 19.05.2016 passed by the Trial Court.

The respondent had filed a summary suit under Order XXXVII CPC for a recovery of Rs.16,11,36,126/-. By the order dated 18.01.2016, the Trial Court granted conditional leave to defend to the petitioner subject to the petitioner/defendant placing on record an FDR in the sum of Rs. 5 lacs which was to be kept on record till the time of the decision in the suit.

The petitioner thereafter moved an application under Section 151 CPC for waiver of the condition imposed by the Trial Court by its order dated 18.01.2016. The court dismissed the application holding that there are

no grounds to review its order.

Learned counsel appearing for the petitioner has relied upon the order of the Trial Court dated 18.01.2016 by which conditional leave to defend was granted to the petitioner pointing out that the learned Trial Court has noted all the questions that have arisen in the suit, namely, whether the bills/invoices produced by the plaintiff /respondent are genuine or not, whether the statements of accounts are proper and whether any goods on account of inferiority were returned and whether any settlement of account occurred or not. The court noted that the claims of both the parties have to be looked into by going through various bills, statements and documents, etc. Hence, the court noted that at this stage, liability of the petitioner/defendant cannot be fixed or decided in summary manner. Accordingly, the trial court granted conditional leave to defend.

It is urged that the observations of the trial court itself indicate that unconditional leave to defendant ought to have been granted as no case is made out by the respondent.

The principle to grant leave to defend is well known. The basic judgment in this regard is of *M/s Mechalec Engineers & Manufacturers v. M/s Basic Equipment Corporation AIR 1977 SC 577*. In para 8, the Hon'ble Supreme Court has held as follows:

“In *Smt. Kiranmoyee Dassi and Anr. v. Dr. J. Chatterjee* 49 C.W.N. 246 , Das. J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by order 17 C.P.C. in the form of the following propositions (at p. 253) :

(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not

entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.

(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.

(c) If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.

(e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the Plaintiff is entitled to leave to sign judgment, the Court may protect the Plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to prove a defence.”

The trial court in exercise of its discretion has granted conditional leave to defend subject to deposit of the FDR of Rs.5 lacs. The court placed

the case of the petitioner in para (c) above. No grounds are shown to modify the said condition. The petition is dismissed. The petitioner is accordingly granted two weeks' from today to place on record necessary FDR in compliance with the order of the trial court.

JAYANT NATH, J

JULY 11, 2016

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