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

+ **CM(M) 765/2016**

BHAVNESH ARORA

..... Petitioner

Through Mr.Puneet Singh & Ms.Surabhi
Arora, Advocates

versus

VIJAY BIST

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.08.2016

1. By the present petition, the petitioner seeks to impugn the order dated 23.03.2016 whereby the application filed by the respondent was allowed and leave to defend was granted.

2. The petitioner has filed the present suit seeking recovery of Rs.1,50,891/-. The defendant had entered appearance and filed leave to defend application.

3. A perusal of the impugned order shows that the trial court has noted the defence of the respondent, namely that the goods were supplied at inflated prices and that the bills on record are forged and fabricated. Based on this averment of the respondent, the trial court noted as follows:

“....Therefore, after giving thoughtful consideration to the record and hearing the submissions, I am of considered opinion that some triable issues have been raised by the defendant and

accordingly unconditional leave to defend is granted to the defendant.”

4. The learned counsel for the petitioner submits that an advance copy of the present petition has been served to respondent. He submitted that in fact the case was listed today before the trial court and the learned counsel for the respondent has appeared before the trial court and has been apprised about the case listed today before this court. Despite service of advance copy, none is present for the respondent.

5. It appears from the impugned order that the trial court only noted the submissions of the respondent and concluded that the triable issues have been raised by the respondent. The trial court by referring to the contentions of the parties had to come to a conclusion regarding whether the defendant/respondent had a good defence and then only grant unconditional leave to defend. In the absence of any reason as to why the application for leave to defend of the respondent was granted, there is an error apparent in the impugned order.

6. Accordingly, I *set aside* the impugned order dated 23.03.2016. The trial court is requested to consider the leave to defend application filed by the respondent afresh and dispose of the same in accordance with law.

7. The petition stands disposed of.

JAYANT NATH, J.

AUGUST 09, 2016/v