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

+ CM(M) 1289/2016

M/S GALAXY I TECHNOLOGY INDIA
PVT LTD & ORS.

.... Petitioner

Through Mr.Kushagra Bansal, Adv.

versus

M/S SUPER SOUND ELECTRONICS PVT LTD..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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15.12.2016

CM Nos.46220/2016 & 46222/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1289/2016 & CM No.46221/2016 (stay)

Advance copy of the petition has been sent to the respondent but none is present on its behalf.

By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 6.12.2016 by which an application for early hearing of the petition filed by the petitioner under Order 37 Rule 4 CPC was not allowed.

Learned counsel appearing for the petitioner has pointed out that an ex parte decree was passed against the respondent for a sum of Rs.25,05,000/-. The petitioners accordingly moved an application under Order 37 Rule 4 CPC seeking an opportunity to defend the suit and for

setting aside the ex parte decree. The application was filed on 25.11.2016 and it was put up for appearance on 1.12.2016. On 1.12.2016 the trial court put the matter for consideration on 13.1.2017. In the meantime, the trial court continued the execution proceedings of attachment of moveable property of the petitioner. Accordingly, the petitioners moved an application for early hearing of the application under Order 37 Rule 4 CPC which was put up on 6.12.2016. On that date, the trial court noted that there are no special circumstances for grant of early hearing and in case the application is allowed the petitioners/judgment debtor would have a right for restitution. The application for early hearing was dismissed and the matter was adjourned to 13.1.2017 when the application of the petitioner was to be heard.

In my opinion, the order dated 6.12.2016 suffers from material errors. The application has been filed by the petitioners under Order 37 Rule 4 CPC stating that they were not aware about the proceedings. In the application it is submitted that the admitted liability is upto a sum of Rs.10,00,000/- and they dispute the other liability as no such goods were supplied. Instead of dealing with the matter the trial court has dismissed the application for early hearing and has continued the process of execution of the decree.

Subject to the petitioner depositing a sum of Rs.10 lacs before the executing court on the next date of hearing i.e. 13.1.2017, there shall be stay of the execution of the decree dated 10.3.2016 till disposal of the application of the petitioner under Order 37 Rule 4 CPC. I may note that the petitioner shall not take any adjournment before the trial court when this application is put up for hearing.

With the above, the present petition stands disposed of. All pending

applications, if any, also stand disposed of accordingly.

A copy of this order be given dasti under signatures of the court master.

JAYANT NATH, J

DECEMBER 15, 2016

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