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

+ RFA 640/2015 & CM No.21389/2015 (for stay)

M/S AIMER AIR CONDITIONING PVT. LTD. Appellant

Through: Mr. Syed Hasan Isfahani, Adv.

Versus

ENMAX SYSTEMZ

..... Respondent

Through: Mr. Kapil Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.03.2016

1. This order is in continuation of the previous order dated 16th March, 2016.
2. The counsel for the appellant states that Mr. Pradeep Sharma, Managing Director of the appellant is out of station, Mr. Akashdeep Sharma, another Director is present along with the records.
3. The said records have been perused. It only comprises of internal documents of the appellant and does not include even the certified accounts of the appellant from which it can be gathered that a person by the name of Ms. Shikha Khanna is under employment of the appellant or that salary is being credited to her. No medical records of the said Ms. Shikha Khanna also are found. The counsel for the appellant informs that since the said Ms. Shikha Khanna did not submit medical records, her salary was deducted. However again, accounts to show that such deductions were given effect, have not been produced.

4. The appellant inspite of observations in the impugned order to the effect that the appellant has not placed any material before the Court to justify the delay, not only did not file any records along with the appeal but even now, inspite of opportunity, has not produced any records.
5. Once it is found that the appellant is unable to justify the reasons given for not entering the appearance within the prescribed time, the appeal is liable to be dismissed.
6. However, only for the reason of not depriving the appellant from decision on merits, it is deemed appropriate to allow the appeal conditionally on payment of costs of Rs.45,000/-. The said costs have been assessed, after taking into consideration the delay which the appellant has caused for reasons attributable solely to itself and the appellant having not been able to satisfactorily establish before the Court the case made out for condonation of delay and considering the inconvenience and expenditure incurred by the respondent thereby.
7. Accordingly, subject to the appellant (I) on or before 31st March, 2016 paying costs of Rs.45,000/- to the respondent; and (II) filing leave to defend application before the Trial Court on or before 31st March, 2016, the appeal is allowed and the impugned judgment and decree is set aside.
8. The parties to appear before the District Judge, South East, Saket Courts, New Delhi on 31st March, 2016 when the District Judge / Additional District Judge to whom the suit may be assigned shall fix a date for further proceedings in the matter.
9. The file handed over by the counsel for the appellant has been returned to the counsel.

10. Subject to the appellant furnishing proof of having paid the costs, as aforesaid, the amount deposited by the appellant in this Court together with interest accrued thereon, be refunded to the appellant.

11. The appeal shall stand allowed and the decree impugned set aside on above terms.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MARCH 17, 2016

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