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

+ RFA 454/2017 & CM 16505/2017

% *Date of Judgment: 30th May, 2017*

M/S SHREE PARASHAVNATH TRADERS Appellant
Through Mr.C.S. Bhandari, Adv.

versus

M/S ASIAN PAINTS LIMITED Respondent
Through Mr.Shantanu Sood, Adv. with
Mr.Vaibhav Vutts and Mr.Aamna Hasan, Adv.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. The appellant has impugned the judgment and decree dated 10th November, 2016 passed by the Additional District Judge-2, East, Karkardooma Court, Delhi by which Summary Suit against the appellant was decreed with cost & interest.

2. The respondent/plaintiff filed a suit for recovery of Rs.10,50,000/- against the appellant/defendant under Order XXXVII of the Code of Civil Procedure, 1908 (in short "CPC"). Pursuant to the summons for judgment under XXXVII CPC, the appellant filed an application for leave to defend on 18th January, 2016. Reply to this application was filed by the respondent. The matter was lastly listed for arguments by the learned ADJ on 10th November, 2016. In the first session only learned counsel for the respondent/plaintiff appeared and since none appeared on behalf of the appellant/defendant, the matter was listed "for clarifications, if any/orders at 4:00 PM".

3. The matter was again taken up by learned ADJ at 4:00 PM on that day when neither party appeared and the learned Trial Court dismissed the application for leave to defend by observing that appellant appears to be not interested in pursuing the same. Learned counsel for the appellant submits that the learned ADJ decreed the suit of the respondent without perusing the application and the record. He also submits that there are serious arguable points in his application. He also submits that the respondent has also claimed interest for the period prior to filing of suit which was not agreed or settled between the parties and Summary Suit was not maintainable.

4. Learned counsel for the appellant submits that even if the appellant/defendant has not appeared before the learned Trial Court, the learned ADJ failed to appreciate the merits of the application and it was just dismissed by citing the judgment of this Court in *M/s Jindal Paper & Plastics Ltd. vs. M/s Kedia Distilleries Ltd. & Ors.*, 2000 VI AD (Delhi) 122.

5. He also submits that the learned Trial Court has not even bothered as to whether Summary Suit even on the facts pleaded in the plaint was maintainable or not. He submits that the said judgment in *M/s Jindal paper* (supra) is distinguishable. He submits that in that case, the defendant did not supply copies of documents to the plaintiff. At the time of disposal of suit, even the plaint and documents were perused by the Hon'ble Judge sitting on Original Jurisdiction and facts of the case were detailed in the judgment and only then the suit was decreed.

6. I have perused the record. Application for leave to defend has not been decided on merits by the learned ADJ and it will not prejudice the respondent if the application for leave to defend is disposed of on merits.

Hence, in the interest of justice, the impugned judgment and decree dated 10th November, 2016 are set aside.

7. The matter is remanded back to the Trial Court to hear both the parties and decide the application for leave to defend filed by the appellant/defendant on merits. For this purpose, it is directed that both the parties shall appear before the Trial Court on 12th July, 2017 and address the arguments on that day itself. After hearing the arguments, the learned Trial Court shall dispose of the application in accordance with law.

8. Appeal and all pending applications are disposed of.

9. Trial court record be sent back forthwith.

VINOD GOEL, J.

MAY 30, 2017/jitender