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

+ **FAO 341/2016 & CM Appln. No.26494/2016**

M/S IDEA CELLULAR LTD Appellant
Through: Mr.Rajesh Ranjan and Ms.Ashita
Chhibber, Advs.

versus

M/S ELFAD MARKETING Respondent
Through: Mr.Love Kumar, Adv. with
Mr.Pawan Gupta, Partner of
R. in person.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
04.05.2017

1. The appellant has challenged the order dated 25th May, 2016 whereby its application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 16th September 2015 has been dismissed.
2. After hearing the parties, this Court is of the view that subject to the appellant furnishing the bank guarantee in respect of 50% of the decretal amount to the learned Trial Court within four weeks, the ex-parte decree is liable to be set aside.
3. Learned counsel for the appellant submits on instructions from the officers of the appellant that the appellant shall furnish the bank guarantee in respect of 50% of the decretal amount to the learned Trial Court within four weeks.
4. The appeal is allowed and the impugned order dated 25th May, 2017 and ex-parte judgment/decreet dated 16th September, 2015 are set aside.

Pending application is disposed of.

5. The parties shall appear before the learned Trial Court 5th June, 2017 when the appellant shall furnish the bank guarantee in respect of 50% of the decretal amount to the Trial Court. The bank guarantee should be encashable in the event of the respondent's suit being decreed by the learned Trial Court. The learned Trial Court shall afford one opportunity to the respondent for cross-examination. If the cross-examination does not conclude on the date fixed, the Court shall fix an early date for continuing the cross-examination of the respondent. After the cross-examination of the respondent, the learned Trial Court shall give an opportunity to the appellant to lead evidence.

6. Learned counsels for the parties have noted down the date of appearance before the learned Trial Court and they waive the requirement of fresh notice from the learned Trial Court. Learned counsels for the parties submit that they shall not take any unnecessary adjournment before the learned Trial Court.

7. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 04, 2017

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