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

+ RFA 463/2005

UOI M/O COMMUNICATION DEPARTKE Appellant

Through: Dr. Ashwani Bhardwaj, Advocate.

versus

M/S G.M.S. SERVICES P. LTD. Respondent

Through: Mr. M.K. Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **24.07.2018**

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908(CPC) impugns the judgment passed by the Trial Court dated 12.1.2005 decreeing the suit for recovery of money filed by the respondent/plaintiff. The impugned judgment proceeds on the basis that evidence of two witnesses of the appellant/defendant could not be looked into as the evidence of two witnesses was struck off in terms of the order dated 12.4.2004 passed by the trial court.

2. I have gone through the order dated 12.4.2004 and by this order effectively two directions were passed. Firstly, on account of the witnesses who were sought to be examined by the appellant/defendant being those

witnesses not mentioned in the list of witnesses of the appellant/defendant, evidence of such witnesses were held could not be looked into. This aspect is completely against the ratio of the judgment of the Supreme Court in the case of ***Mange Ram Vs. Brij Mohan and Ors. (1983) 4 SCC 36*** and which lays down the ratio that any person who is brought by a party on his own responsibility, then, evidence of such witness shall be recorded by the court although the name of the witness does not appear in the list of witnesses. Therefore to this extent the order dated 12.4.2004 is illegal and such order can be set aside in view of the provision of Section 105(1) CPC.

3. So far as the aspect of the documents filed by the appellant/defendant not being taken on record, it could not be disputed that such documents were already referred to in the pleadings of the appellant/defendant and there is no doubt as to genuineness of such documents. Once there is no doubt to the genuineness of the documents, courts have to be very liberal in allowing the production of such genuine documents and as held by the Supreme Court in the case of ***Billa Jagan Mohan Reddy & Anr. Vs. Billa Sanjeeva Reddy & Ors. (1994) 4 SCC 659.***

4. In view of the aforesaid position of law and the facts of the

present case, counsel for the respondent fairly agrees that impugned judgment dated 12.1.2005 be set aside and the same is set aside accordingly and appellant is granted liberty to now lead evidence of its witnesses. The documents which have been referred to by the appellant/defendant in its pleadings or otherwise, copies of which were on record, can be led into evidence by the appellant/defendant. Not more than four opportunities will be given to the appellant/defendant to lead its evidence of witnesses as examination-in-chief. The documents of the appellant/defendant are allowed to be taken on record subject to payment of costs of Rs.20,000/- to the counsel for the respondent in this appeal. Costs shall be paid on the first date which is fixed for examination of the witnesses of the appellant/defendant.

5. The appellant/defendant/judgment debtor had deposited the decretal amount in this Court and which was withdrawn by the respondent/plaintiff/decreed holder after appeal was dismissed in default. Since now the appeal is allowed and remanded back to the trial court for fresh judgment to be passed after the appellant/defendant leads its evidence, instead of directing the respondent/plaintiff to deposit the amount in this

Court as withdrawn by the respondent/plaintiff, the respondent/plaintiff can either deposit this amount before the trial court or give solvent security to the satisfaction of the trial court for the amount withdrawn alongwith accrued interest within a period of six weeks of the first date being fixed before the competent trial court. It is however made clear that in case the respondent/plaintiff fails to comply with this part of the order of deposit of amount in the trial court or giving solvent security, the suit of the respondent/plaintiff will not proceed further and will have to be dismissed on account of non-compliance of the order passed by this Court.

6. Parties to appear before the Principal District & Sessions Judge, Tis Hazari Courts, Delhi on 27th August, 2018 and the Principal District & Sessions Judge will now mark the suit for disposal to a competent court in accordance with law. Trial court record be sent back alongwith copy of the present order to the Principal District & Sessions Judge.

7. Appeal is accordingly disposed of in terms of aforesaid observations.

Dasti to the counsels for the parties.

VALMIKI J. MEHTA, J

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