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

+ CM(M) 411/2015

M/S SHUBH CONSTRUCTIONS CO Petitioner

Through: Mr. Yash Anand, Adv.

versus

M/S HI-TECH GEOSYNTHETICS PVT LTD Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **16.05.2018**

On the civil suit (no.604/2012) instituted on 08.02.2011 by the respondent, an *exparte* decree was passed by the Additional District Judge by judgment dated 24.08.2013. In terms of the decree, the petitioner has to pay an amount of Rs.7,58,118/- alongwith interest at the rate of 12% p.a. with effect from 21.04.2010 till date of filing of the suit and thereafter with interest at the rate of 6% p.a. till the date of realization. The respondent / decree holder had taken out execution proceedings before the trial court, the same having been registered as Execution Petition no.167/2014. It appears that on the application of the respondent / decree holder, the decree was transferred for execution to the court of the District Judge, Unnao in Uttar Pradesh by order dated 09.05.2014. In the meantime, the petitioner / judgment debtor had come up with an application under Order IX Rule 13 of the Code of Civil Procedure. The said application, registered as M-96/2015, having been resisted, remains

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pending till date. Meanwhile, the petitioner / judgment debtor had moved the trial court for stay against execution of the *ex parte* decree and also vis-a-vis the order dated 09.05.2014 whereby the decree had been transferred for execution to the court of the District Judge, Unnao, Uttar Pradesh. The said prayer was, however, declined by the order dated 18.04.2015.

Notice on the petition challenging the aforementioned order dated 18.04.2015 was issued by order dated 07.05.2015 whereby the operation of the transfer certificate issued on 03.06.2014 (presumably in wake of order dated 09.05.2014) was stayed. The respondent / decree holder was duly served and even appeared, initially through representative and later through counsel, till 10.03.2016. Thereafter, there has been consistent default in appearance on behalf of the respondent. The situation remains the same even today.

In the aforementioned facts and circumstances, this court finds no good reason why the execution should be permitted to continue till a decision is taken on the application under Order IX Rule 13 CPC.

Thus, the impugned order is set aside. The execution proceedings, including before the transferee court in terms of order dated 09.05.2014, shall remain stayed till decision is taken on the application under Order IX Rule 13 CPC.

The petition is disposed of in above terms.

R.K.GAUBA, J.

MAY 16, 2018/yg
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