

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 176/2019, CM No. 9859/2019
GAGAN JINDAL

..... Appellant
Through: Mr. Aditya Sharda, Adv. with
Mr. Rajesh Chettri, Adv.
versus

KAMAL RANA

..... Respondent
Through: Mr. Kamal Mehta, Adv. with
Mr. Jagminder Rane, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **22.05.2019**

CM No. 9859/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RFA 176/2019

The challenge in this appeal is to the judgment / decree dated February 06, 2019 whereby the suit filed by the respondent herein has been decreed on the ground that the condition of deposit of Rs.42,30,000/- for grant of leave to defend has not been fulfilled. Suffice it to state, against the order of conditional leave to defend dated October 29, 2018, the appellant herein had filed a CM(M) 87/2019, which was dismissed by the Coordinate Bench of this Court on January 21, 2019. Against the said order, the

appellant had filed an SLP before the Supreme Court being SLP No. 10151/2019, which was disposed of by the Supreme Court in terms of the following order:-

“Leave granted.

Heard the learned counsel for the parties.

This appeal has been filed against the order of the High Court dated 21.01.2019 by which CM(M) No.87/2019 has been decided. An order was passed on 29.10.2018 by the learned Additional District Judge granting conditional leave to defend on furnishing of FDR in the name of defendant in the sum of Rs.42,30,000/- for a period of one year with facility of automatic renewal for the same period. The said order was not interfered with by the High Court. Aggrieved, this appeal has been filed.

Learned counsel for the appellant although sought to raise various contentions challenging the grant of conditional leave and also placed reliance of the judgment of this Court in IDBI Trusteeship Services Limited Vs. Hubtown Limited - (2017) 1 SCC 568, we do not find any error in the order of the Additional District Judge granting conditional leave in the facts of the present case. Learned counsel for the appellant lastly submitted that time for depositing FDR should be extended which the appellant could not do during pendency of this appeal. Learned counsel for the respondent has no objection.

We allow two weeks time from today to deposit the FDR in the Court, as directed by learned Additional District Judge.

We have also been informed that suit was decreed due to the default committed by the appellant in depositing the FDR, against which order appeal has already been filed by the appellant, which is pending. It will be open for the appellant to file the copy of this order before the High Court so that the appeal may be accordingly decided.

Appeal is disposed of accordingly.”

Pursuant to the order of the Supreme Court, the appellant has deposited a sum of Rs.42,30,000/- before the Trial Court, which is clear from the order dated May 09, 2019, a copy of which has been produced by the learned counsel for the appellant.

In view of deposit of the said amount, the condition for grant of leave to defend having been fulfilled, the judgment /decree dated February 06, 2019 is set aside. The appeal is disposed of. The parties shall appear before the Trial Court on July 03, 2019 for further proceedings. Parties shall be at liberty to seek early disposal of the suit by making a request to the Trial Court.

V. KAMESWAR RAO, J

MAY 22, 2019*/ak*