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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 31st January, 2020

+ **CM (M) 113/2020**

GAGAN DEEP AHLUWALIA Petitioner

Through: Mohd. Rashid and Mr. W. R. Khan,
Advocates. (M:9811988189)

versus

SUPERIOR PRODUCTS INDUSTRIES & ORS. Respondents

Through: Mr. Anand Vardhan, Advocate.
(M:9212799778)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 3766/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 113/2020 & CM APPL. 3765/2020 (stay)

2. The Petitioner/Plaintiff (*hereinafter 'Plaintiff'*) has challenged the impugned order dated 9th December, 2019 by which amendment of the written statement filed on behalf of Respondent No.1/Defendant No.1 - Superior Products Industries (*hereinafter Defendant No.1*) has been permitted after the Plaintiff's evidence had concluded in the matter.

3. The Plaintiff filed a suit seeking recovery of a sum of Rs.85,31,644/- along with interest against Defendant No.1 and its partners. The suit was filed before the Original Side of this Court. Issues were framed in the suit on 28th January, 2014. The Defendant No.1, which is a partnership firm had filed its written statement at the initial stage itself. Due to increase in the pecuniary jurisdiction of this Court, the suit was transferred to the District Court on 4th December, 2015. Thereafter, for whatever reasons, the

Defendants did not appear before the Trial Court. Due to non-appearance on 23rd February, 2017, the Defendants were proceeded *ex-parte*. The Plaintiff commenced his evidence in the matter. On 26th October, 2017 a proxy counsel entered appearance on behalf of the Defendants, however, the said counsel did not choose to cross-examine the witness of the Plaintiff who was being examined on the said date. The examination of the Plaintiff's witnesses was conducted even on 12th December, 2017; however, no cross-examination was done by the counsel for Defendant No.4 who is the signatory of the written statement on behalf of the Defendant No.1 - partnership firm. The Defendants continued to appear in the matter. On 20th February, 2018 an application under Order IX Rule 7 CPC was moved by the Defendants. On 28th March, 2018 the application under Order IX Rule 7 CPC was allowed subject to payment of Rs.5,000/- and an opportunity was granted to address final arguments. The relevant portion of the said order reads as under:

“At the outset, counsel for defendant no. 4 states that she will file vaklatnama on behalf of all the defendants. The same be done in the meantime.

2. Arguments heard on the application of the defendant under Order 9 Rule 7 CPC seeking setting aside of the order dated 23.02.2007. It is stated by the defendant that no court notice was received by the defendant after transfer of this case before this court and they were not knowing about the pendency of the present case.

3. On the other hand, counsel for plaintiff pointed out that the said application is hopelessly time barred as the same was filed after one year and right of the defendant no. 2 and 4 to file WS was closed long back before the Hon'ble. High Court of Delhi on 15.03.2013.

4. In the present application there is no prayer/clause for

reopening the right of the defendant to file written statement. Accordingly, the application of the defendant under Order 9 Rule 7 CPC is allowed subject to cost of Rs. 5,000/- after condoning the delay and defendant no. 4 is given an opportunity to address final.....(Incomplete order on record and online).

4. Thus, the Defendants were given an opportunity only to address final arguments. This order has not been challenged. After the entire evidence of the Plaintiff was concluded, the Defendants then moved an application under Order VI Rule 17 CPC. The said application was dismissed on 2nd August, 2018. A second application under Order VI Rule 17 CPC has been filed and vide the impugned order dated 9th December, 2019, the said application under Order VI Rule 17 CPC has now been allowed subject to payment of Rs.20,000/- as costs.

5. The contention of Id. counsel for the Plaintiff is that the trial in the suit has already concluded. The Defendants were already aware of the proceedings which were pending against them. The amendment at this stage, would be contrary to the proviso of Order VI Rule 17 CPC and thus, the impugned order is not sustainable.

6. On the other hand, Id. counsel for the Defendants submits that after the transfer of the suit to the District Court, no notice was served upon the Defendants. He further submits that if one opportunity is given, he would like to cross-examine the main witness of the Plaintiff as also lead evidence on behalf of the Defendants.

7. The Court has perused the order sheets. Right from inception, the Defendants have been appearing in the matter till the time the transfer of the suit took place. Upon transfer, for whatever reasons, the Defendants stopped

appearing in the matter and it was without any further notice being served that they again started appearing in the year 2018. Thus, it is clear that the Defendants had chosen to remain away from the court proceedings without any basis whatsoever. The counsel for the Defendants was also appearing in the matter when the various witnesses of the Plaintiff were being examined, thus, the written statement having been on record, there is no reason why the Defendants could not have cross-examined the Plaintiff's witnesses. In any event, the impugned order now is under Order VI Rule 17 CPC and the same cannot be allowed in view of the fact that the trial has not only commenced in the matter but has in fact concluded on behalf of the Plaintiff.

8. Under these circumstances, this Court is of the opinion that the impugned order is unsustainable and the same is set aside. The Defendant No.1 and the other Defendants are permitted to rely upon the existing written statement, which is already on record. Subject to payment of Rs.20,000/- as costs which has already been imposed by the Trial Court, the Defendants are permitted to lead the evidence of only one witness to support their defence in the suit. No further opportunity shall be granted. The next date before the Trial Court is fixed as 8th April, 2020. On the said date, the Defendants' witness shall appear before the Trial Court. The affidavit in evidence on behalf of the Defendants shall be filed within four weeks from today with advance copy to the Plaintiff's counsel.

9. The petition along with the pending application is disposed of in the above terms. *Dasti.*

PRATHIBA M. SINGH
JUDGE

JANUARY 31, 2020/dk