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

+ **CM(M) 284/2020**

JINAAM DRESS PVT LTD

..... Petitioner

Through: Mr. Ranjit Raut and Mr. Manjunath
Meled, Advocates. (M:8377840908)

versus

FASHION DESIGN COUNCIL OF INDIA

..... Respondent

Through: Mr. Sushant, Ms. Shikha, Ms. Rishika
and Mr. Natasha, Advocates.
(M:8427490308)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **03.03.2020**

CM APPL. 8373/2020 (Exem)

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

CM(M) 284/2020 & CM APPL. 8372/2020

2. The petition challenges the impugned order dated 24th February, 2020 which sought recall of order dated 5th December, 2019 and 6th February, 2020, by which the Trial Court, in effect, has confirmed the order setting the Petitioner herein/Defendant in the suit, *ex parte* and has closed its right to cross-examine PW-1.

3. A suit for damages and consequential reliefs arising out of a contract dated 10th July, 2015 was filed by the Respondent herein/Plaintiff - Fashion Design Council of India (*hereinafter* 'FDCI') against the Petitioner herein/Defendant - Jinaam Dress Pvt Ltd. The suit was initially instituted on the Original Side of this Court and the Petitioner herein/Defendant therein

(*hereinafter* 'Defendant') was proceeded *ex-parte*, even when the proceedings were pending in this Court vide order dated 25th October, 2017.

4. Thereafter, on 12th December, 2017, the plaint was returned on the ground that the same would not be a commercial dispute and the suit was transferred to the District Judge, Saket Courts in view of its pecuniary value. After the suit was transferred, the Defendant appeared in the matter and filed its written statement on 30th July, 2018. However, subsequently, the Defendant stopped appearing in the matter. On 5th December, 2019, the Defendant was proceeded *ex-parte*.

5. The Plaintiff's witness thereafter tendered his affidavit in evidence and the matter was fixed for final *ex-parte* arguments. On 6th February, 2020 *ex-parte* final arguments were also heard and the case was listed for orders on 24th February, 2020. The final arguments were heard in the presence of the proxy counsel for the Defendant.

6. After the matter was listed for orders on 24th February, 2020, the Defendant chose to wake up from its slumber and moved an application under Order IX Rule 7 CPC seeking setting aside of the order dated 5th December, 2019 and 6th February, 2020. Both the applications were dismissed by the Trial Court and are now subject matter of the present petition.

7. The counsel for the Defendant submits that the Defendant had filed the written statement way back in July, 2018 itself. However, due to miscommunication between the Defendant who is based in Surat and the counsel who is based in Bombay as also the proxy counsel who is appearing in the matter, in Delhi, non-appearance occurred. He submits that the Defendant can be put to terms and be given one opportunity to cross-

examine the Plaintiff's witness and to lead its evidence.

8. On the other hand, ld. counsel appearing for the Plaintiff/FDCI after taking the Court through the order sheets submits that the Defendant has appeared sporadically and that too only through proxy counsel. After 31st July, 2018 the main counsel who is stated to be based in Bombay, never appeared in the matter. Issues were framed in the absence of the Defendant on 29th October, 2018. On 27th February, 2019 and 24th July, 2019 proxy counsel was present but no cross-examination was conducted. On 5th December, 2019 none appeared for the Defendant despite repeated calls and it was only then the Defendant was proceeded *ex parte*. Even final arguments have been heard in the matter, thus, the Defendant does not deserve any indulgence of this Court.

9. A perusal of the suit reveals that the damages being sought are to the tune of approximately Rs.1.20 crores along with interest. The same is a substantial sum. The Defendant has definitely been callous and negligent in the present case. There is no dispute, however, that the written statement is on record and the defence which has been raised by the Defendant is that the Defendant is not bound to continue with the sponsorship arrangement, as the same stood terminated by the Defendant.

10. Considering the claim in the suit, the defence in the written statement and the amount of which recovery is being sought, the Defendant is being put to terms for being given an opportunity to cross-examine the Plaintiff's witness and to lead its evidence. Accordingly, it is directed as under:

- a) The Plaintiff's witness shall be cross-examined by the Defendant on the next date fixed by the Trial Court. The said cross-examination shall be conducted in one afternoon session, as may be fixed by the

Court and subject to strict timelines as directed.

- b) Upon the cross-examination being concluded, on the same day, the Defendant shall serve the affidavit in evidence of its one witness and file the same. The Trial Court shall then fix a date for cross-examination of the Defendant's witness by the Plaintiff/FDCI.
- c) Upon the evidence being concluded, final arguments shall be heard and the suit shall be disposed of within four months from today.

11. The above permission is being granted to the Defendant subject to payment of Rs.1 lakhs as costs to the Plaintiff/FDCI and deposit of a sum of Rs.5 lakhs before the Trial Court which shall abide by the final decision of the Trial Court. The sum of Rs.5 lakhs shall be retained before the Trial Court in an interest-bearing fixed deposit. The evidence shall be led only subject to the payment of costs and the deposit being made. The payment of costs and deposit of Rs.5 lakhs shall be made within four weeks from today.

12. With these observations the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

MARCH 03, 2020

Dj/A.S.