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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 523/2019 & CM APPL. 15313/2019**

RISHI AHUJA

..... Petitioner

Through: Mr. Akshay Srivastava & Mr. Prateek
Vats, Advocates (M-9899525755)

versus

HINDUSTAN PLYWOOD COMPANY

..... Respondent

Through: Mr. S.S. Saluja & Mr. Ashima
Chhalwal, Advocates (M-
9871953456)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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27.02.2020

1. A suit for recovery of a sum of Rs.29,68,254/- was filed by the Respondent/Plaintiff - Hindustan Plywood Company (*hereinafter, "Plaintiff"*) against the Petitioner/Defendant – Mr. Rishi Ahuja (*hereinafter, "Defendant"*). The said suit was filed under Order XXXVII CPC, however, due to an error in the Trial Court, ordinary summons were issued in the suit which were not served on the Defendant. The Plaintiff then sought to serve the Defendant by publication which was allowed on 26th September, 2014. Vide order dated 28th January, 2015 the Defendant was proceeded against *ex-parte*. The Plaintiff filed its affidavit by way of evidence and a judgment was passed in favour of the Plaintiff on 24th August, 2015.

2. In May, 2016, an execution petition, being E.P No.23/2016, was filed by the Plaintiff and it was at that stage that the Defendant is stated to have learnt of the decree having been passed against him. The suit which was originally filed in the High Court was transferred to the Trial Court on

account of the increase in the Court's pecuniary jurisdiction. The Defendant then moved an application under Order XXXVII Rule 4 CPC seeking the setting-aside of the judgment dated 24th August, 2015. This application was rejected by the Trial Court vide the impugned order dated 3rd February, 2018.

3. A perusal of the record shows that there was an error by the Court at the time of issuing of summons, inasmuch as the summons were not issued in the appropriate format and summons for judgment was also not filed.

4. Accordingly, with the consent of the parties, the suit is remanded back to the Trial Court for fresh adjudication. The Trial Court shall now proceed from the stage of summons for judgment being filed by the Plaintiff. The same shall be filed by the Plaintiff within four weeks from today. Upon the Plaintiff filing the summons for judgment and serving the same upon the Id. counsel for the Defendant, the Defendant shall file his leave to defend application, as per the timelines fixed in Order XXXVII CPC, which shall be adjudicated in accordance with law.

5. With these observations, the decree dated 24th August, 2015 is set-aside. Considering that the suit is one under Order XXXVII CPC, the Trial Court shall endeavour to dispose of the same expeditiously.

6. The petition and all pending applications are disposed of.

7. The date before the Trial Court is fixed for 13th April, 2020. Let a copy of this order be communicated to ADJ-02 in CS No.209095/2016 titled *Hindustan Plywood Company v. Rishi Ahuja* for marking the same before an appropriate Commercial Court.

PRATHIBA M. SINGH, J

FEBRUARY 27, 2020/Rahul