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

% Judgment delivered on: 16th June, 2020

+ CM(M) 364/2020

FULLERTON INDIA CREDIT CO. LTD. Petitioner

versus

AFTAB AHMED Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Sanjeev Sagar, Advocate

For the Respondents: Mr. Maroof Ahmad, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (Oral)

CM APPL. 12608/2020 (Exemption)

Allowed, subject to all just exceptions.

CM (M) 364/2020 & CM APPL 12607/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 21.02.2018 whereby petitioner was proceeded ex parte and his application under Section 8 of the Arbitration and Conciliation Act, 1996 was dismissed in default. Petitioner also impugns order dated 06.02.2020 whereby petitioner's application under Order VII Rule 11 CPC read with Section 8 of the

Arbitration and Conciliation Act, 1996 was dismissed. Petitioner also impugns order dated 13.03.2020 whereby application of the petitioner under Order IX Rule 13 CPC read with Section 151 CPC seeking setting aside order dated 21.02.2018 was dismissed.

3. Learned counsel for the petitioner submits that in case one opportunity is granted to the petitioner to file his written statement, petitioner shall not press his application under Section 8 of Arbitration & Conciliation Act, 1996 and his application under Section VII Rule 11 CPC.

4. Learned counsel for the respondent submits that in view of expeditious disposal of his Suit, he has no objection in case exparte order dated 21.02.2018 is set aside to the limited extent that petitioner is granted one opportunity to file written statement and defend the suit on merits.

5. Trial court has dismissed the application under Order IX Rule 13 CPC read with Section 151 CPC by order dated 13.03.2020 primarily on the ground that the relief sought is not available under Order IX Rule 13 CPC i.e. setting aside of exparte order and the same is beyond the scope of Order IX Rule 13 CPC.

6. Trial court has committed an error in its order dated 13.03.2020 by not noticing that mere incorrect mention of the provision would not disentitle a party from relief, if it is available on merits. Trial court should have entertained the application and treated the same as an

application under Order IX Rule 7 and considered whether on merits setting aside of ex-party order was warranted or not.

7. However, in view of the above facts and circumstances, order dated 13.03.2020 as also order dated 21.02.2018 is set aside to the extent that the order proceeds exparte against the petitioner. The order proceedings ex-parte is recalled.

8. Petitioner shall file written statement to the plaint within four weeks from today, subject to payment of cost of Rs. 5000/- to be paid to the respondent.

9. The petitioner is disposed of in the above terms.

10. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J

JUNE 16, 2020

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