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

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Judgment delivered on: 12.11.2020

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CM(M) 570/2020

SPACEBIZ SOLUTION PVT LTD

..... Petitioner

versus

AJAY SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Manoj Chauhan, Advocate.

For the Respondents: Mr. Yogesh Goel, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.29073/2020 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 570/2020

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 14.09.2020, whereby, written statement sought to be filed by the petitioner is not taken on record on the ground that the costs imposed by order dated 16.12.2019 by the High Court were not paid within time.

3. Respondent had filed the subject suit seeking recovery of a sum of Rs.35,48,967/-. By order dated 26.04.2017, leave to defend was granted subject to petitioner depositing a sum of Rs.5 lakhs in the form of a fixed deposit in favour of the Court. Fixed deposit of Rs.5 lakhs was deposited with the Trial Court, however, the written statement was delayed and an application seeking condonation of delay was filed, which was rejected by the Trial Court and the defence was struck off.

4. The High Court in its order dated 16.12.2019 has noticed that the leave to defend was granted on 26.04.2017 and the written statement was filed on 25.07.2017, which was within a period of 90 days and the condition to deposit Rs.5 lakhs was complied with by the petitioner. The High Court directed written statement to be taken on record on payment of costs of Rs.20,000/- on or before the next date fixed before the Trial Court.

5. The suit was listed before the Trial Court on 23.12.2019 when the Trial Court noticed that the file had not been received from the High Court and adjourned the case to 26.03.2020. By 26.03.2020, the lockdown of Courts on account of COVID-19 pandemic started.

6. The suit was listed before the Trial Court on 14.09.2020 through video conferencing. On 14.09.2020, counsel for the petitioner submitted that the costs could not be paid as the file had not been received on 23.12.2019 and a cheque for payment of costs had

been received by him from his client but could not be paid to the counsel in view of the lockdown. Despite the same being pointed out to the Trial Court, the Trial Court has held that since the costs was not paid before the Trial Court on or before 23.12.2019, as directed by the High Court, the written statement could not be taken on record.

7. Perusal of the ordersheet of the Trial Court dated 23.12.2019 shows that the file was not received from the High Court and no proceedings could take place and thereafter the case was adjourned to 26.03.2020 by which time the lockdown of Courts commenced. The case was taken up through video conferencing on 14.09.2020, on which date, the costs were sought to be tendered but were not accepted by the Trial Court.

8. In view of the peculiar facts and circumstances of the case and also the COVID-19 pandemic, I am of the view that there is no delay on the part of the petitioner in tendering the costs. The expression “on or before the next date” used by the High Court would amount to the date when the matter is actually taken up. On 23.12.2019, the date fixed before the Trial Court, the file had not been received by the Trial Court and accordingly, the tendering of the cheque could not have been recorded by the Trial Court.

9. Petitioner has placed on record copies of the cheques dated 19.12.2019 and 22.09.2020 in the sum of Rs.20,000/- drawn in favour of the respondent issued by the petitioner.

10. In my view, there is no delay in petitioner tendering the costs in terms of the order of the High Court dated 16.12.2019.

11. In view of the above the impugned order dated 14.09.2020 is set aside. The written statement filed by the petitioner is taken on record of the Trial Court.

12. Respondent is directed to furnish his bank details, within a period of 2 days to the learned counsel for the petitioner. The petitioner shall thereafter deposit the costs in the said account within a period of one week of furnishing of the bank details.

13. Petition is, accordingly, allowed in the above terms.

14. Copy of the Judgment be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

NOVEMBER 12, 2020
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SANJEEV SACHDEVA, J

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