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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 20/2020**

M/S BB METALS

..... Petitioner

Through: Mr. Aabhas Dahiya & Mr. Mahender
Singh, Advocates with Petitioner in
person. (M:9810808725)

versus

DEEP INDUSTRIES & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **13.01.2020**

CM APPL. 1033/2020 (exemption)

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

CM APPL. 1034/2020 (delay in refiling)

2. For the reasons stated in the application, the delay of 187 days in refiling is condoned. The application is disposed of.

CM (M) 20/2020

3. A suit for recovery was filed by the Petitioner/Plaintiff (*hereinafter* 'Plaintiff') for a sum of Rs.20 lakhs along with interest against the Respondent/Defendants (*hereinafter* 'Defendants'). The said suit was dismissed by the Trial Court for non-prosecution on 13th December, 2018 on the ground that process fee was not filed despite repeated opportunities having been given to the Plaintiff. The said order dated 13th December, 2018 is impugned in the present petition.

4. Ld. counsel for the Plaintiff submits that the Plaintiff had, in fact, filed the process fee on two occasions i.e. for the returnable date on 11th March, 2016 as also for 4th December, 2017. He has produced the process

fee receipt on record. It is his submission that the service report on the trial court record shows that the Defendants have changed the address, hence the service could not be effected.

5. It is further submitted that on 13th December 2018, the Plaintiff had prepared an application under Order V Rule 20 CPC for substituted service as well. He submits that the Plaintiff – M/s. BB Metals is a sole proprietary concern of Shri Ram Avtar, who also underwent various heart related procedures and hence there was a delay in the prosecution of the suit.

6. The Court has perused the order sheets of the Trial Court from 11th March, 2016. The process fee receipt dated 12th May, 2017 has also been seen. There is no doubt that there was delay in filing of process fee on several occasions by the Plaintiff. However, considering that the recovery being sought is for a substantial sum and the Plaintiff is a sole proprietor, who has suffered from health-related issues, this Court takes a compassionate view of the matter. The suit is restored to its original position. The Plaintiff shall ensure that the Defendants are served along with the fresh address being supplied within a period of 2 weeks. Any delay by the Plaintiff shall be viewed by the Trial Court strictly. The Plaintiff shall deposit a sum of Rs.10,000/- with the High Court of Delhi (Middle Income Group) Legal Aid Society within a period of 10 days, subject to which the Trial Court shall proceed further in the matter. The proof of deposit of costs be filed before the Trial Court on or before the next date, which is fixed as 5th February, 2020.

7. The petition is disposed of in the above terms.

PRATHIBA M. SINGH, J.

JANUARY 13, 2020/dk