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

+ **CM(M) 777/2018 & CM APPL. 27636/2018**

RAJENDRA SHARMA

..... Petitioner

Through: Mr. M.C. Kashyap and Mr. H.L. Rai,
Advocate. (M:9013568142)

versus

VINOD MAGOTRA

..... Respondent

Through: Mr. Sanjay Kumar Singh, Advocate.
(M:9313328984)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.01.2020

1. The present petition challenges order dated 17th May, 2018. By the said order, the Trial Court, while granting leave to defend, has imposed a condition that the Petitioner/Defendant (*hereinafter*, “*Defendant*”) would deposit a sum of Rs.4 lakhs, which would be kept in a fixed deposit. Thus, conditional leave to defend had been granted to the Defendant. The operative portion of the order reads as under:

*“Having regards to these facts and circumstances, and in order to balance the twin interest of both the parties, that of defendant regarding grant of appropriate opportunity to him to prove his defence and simultaneously of the plaintiff that in the eventuality of failure of defendant / applicant to prove his defence, right of plaintiff to get his claim immediately, the present application seeking 'leave to defend' the suit is allowed, **subject to deposit of Rs. 4,00,000 (Rupees Four Lakhs)** in the form of an FDR from any nationalized bank in the name of "**Ld. District and Sessions Judge, South West District**" within a period*

of 30 days from today.

*In view of the above observation, the application dated 26.05.2017 under Order XXXVII Rule 3(5) r/w Section 151 CPC seeking "leave to defend" the suit filed on behalf of defendant/applicant, is **allowed** and stands disposed off accordingly."*

2. Vide order dated 16th July, 2018, the impugned order was stayed by this Court subject to deposit of Rs.2 lakhs before the ld. ADJ. Ld. counsel for the Defendant submits that the said deposit has been made.
3. The Court has considered the leave to defend application, as also the impugned order. The Trial Court has arrived at a finding that leave to defend should be granted to the Defendant, however, on a condition. This Court is not adjudicating the merits of the leave to defend application as the same would have to be now adjudicated in the suit. Considering that the Defendant has established his bona fides by depositing Rs.2 lakhs, this Court is of the opinion that the condition ought to be modified, and the Defendant be permitted to defend the suit. Accordingly, the condition for grant of leave to defend is modified to Rs. 2 lakhs which stands deposited. The same shall be kept in a FDR and shall finally abide by the decision in the suit.
4. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 13, 2020

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