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

% Judgment delivered on: 21st December, 2021

+ **FAO 237/2020& CM APPL. 32659/2020**

MOTI PACKAGING INDUSTRIES PVT. LTD. Appellant

versus

MANISH ANAND Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ravi Gupta, Senior Advocate with Mr. Ankur Bansal and Mr. Sachin Jain, Advocates with Mr. Sanjay Goyal, Director of Petitioner (in person through VC)

For the Respondent: Mr. Pallav Sisodia, Senior Advocate with Mr. Rajat Arora, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 10.11.2020 whereby the application of the appellant under Order 9 Rule 13 CPC has been dismissed.

2. Respondent had filed the subject Suit for Recovery of a sum of Rs. 52,77,177.37. On 05.08.2016, trial court noticed that the summons had been refused by the appellant on 16.07.2016 and accordingly the Court deemed the appellant to be served and adjourned the Suit to

FAO 237/2020

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30.09.2016 for filing of written statement and further proceedings. On 30.09.2016, since none appeared for the appellant, appellant was proceeded exparte.

3. Subsequently, an exparte judgment was passed on 31.03.2017. Subject application was filed by respondent seeking setting aside of the exparte decree. Said application was dismissed by the impugned order dated 10.11.2020.

4. After some arguments, it is agreed between the parties that the order proceeding exparte and the exparte decree be set aside subject to terms in accordance with Order 9 Rule 13 CPC.

5. Learned Senior Counsel for the appellant under instructions from Mr. Sanjay Goyal, Director of the appellant submits that for the setting aside of the exparte decree, appellant shall deposit a sum of Rs. 20 lakhs with the trial court and furnish a bank guarantee for an additional amount of Rs. 20 lakhs.

6. In view of the above, on appellant depositing a sum of Rs. 20 lakhs and furnishing a bank guarantee for an additional amount of Rs. 20 lakhs, within a period of 8 weeks from today, the order proceeding exparte and the exparte decree shall be set aside.

7. Appellant shall file its written statement within a period of four

weeks from today, which shall be taken on record only on compliance of the condition of deposit of above said amount. It is clarified that in case the appellant fails to comply with the deposit of the amount and furnishing of Bank Guarantee, as aforesaid, this order shall stand vacated and the decree shall become executable in accordance with law.

8. Trial court shall thereafter adjudicate the Suit in accordance with law. However, keeping in view of the fact that the Suit was filed in the year 2016, the trial shall endeavour to conclude the proceedings by 31.12.2022.

9. The amount so deposited and the bank guarantee shall be retained by the trial court and the same shall be subject to the outcome of the Suit. Trial court shall keep the amount deposited in an interest-bearing fixed deposit. The bank guarantee shall be kept alive during the pendency of the Suit.

10. The Suit shall be listed before the Concerned Trial Court for directions and compliance on 20.01.2022.

11. The appeal is disposed of in the above terms.

SANJEEV SACHDEVA, J

DECEMBER 21, 2021/‘rs’

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