

\$~3 and 4

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

% Judgment delivered on: 20.12.2022

+ CM(M) 1241/2022

M/S JOYVISION ELECTROMECH THROUGH
ITS PARTNER PRAVEEN AGGARWAL Petitioner

Versus

M/S FIRST FEEL INTERNATIONAL Respondent

+ CM(M) 1246/2022

JOYVISION ELECTROMECH THROUGH
ITS PARTNER MR PRAVEEN AGGARWAL Petitioner

Versus

SALASAR EXIM LTD AND OTHERS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ruchir Mishra and Mr. Ramneek
Mishra, Advocates

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. By way of the present petitions, Petitioner is challenging the order dated 30.05.2022 whereby the learned Trial Court had rejected the application seeking restoration under Order 9 Rule 4 CPC for recalling

the order dated 03.02.2020.

2. It is the submission of learned counsel for the Petitioner that the last effective date of hearing before the learned Trial Court was 11.09.2019 when the counsel was unable to reach the Trial Court being out of station. The Authorised Representative of the Petitioner reached the Court premises a little late, by which time the matter was already adjourned to the next date of hearing.

3. On 11.09.2019, learned Trial Court adjourned the matter to 03.02.2020.

4. Learned counsel submits that the Authorised Representative of the Petitioner after collecting the information regarding the next date of hearing, informed the learned counsel that the case was posted to 13.02.2020. Accordingly, when the learned counsel alongwith the Authorised Representative reached the Court premises on 13.02.2020, they learnt that the case was already listed on 03.02.2020 and had been dismissed in default on account of their absence.

5. The application seeking restoration was filed on 02.03.2020, within stipulated period of limitation. Learned counsel submits that the wrong noting of date of hearing should not preclude the Petitioner from pursuing its suit and it would be unjust if the Petitioner is non-suited on that basis.

6. Despite service, no one appears for the Respondent. Since it is only a restoration of the suit which has been dismissed at a preliminary stage, no prejudice will otherwise be caused to the Respondents.

7. In the considered opinion of this Court, there is force in the submissions made by learned counsel for the Petitioner in that, no party

ought to be deprived of its rights to a remedy as ordained by law and such issues of dismissal for default on account of a party's absence or that of its counsel, should not come in the way of dispensing complete justice unless the Court finds that as habitual or recurring. In the present case, the Petitioner had, in fact, moved the learned Trial Court for recall of the impugned order within the stipulated period of limitation.

8. More so, the Respondent can always be compensated with costs.

9. Learned Trial Court lost track of another aspect, though it was not relevant at the stage when the suit was dismissed, that the dispute had been lingering on for more than two years only on this account.

10. In view of the above, this Court is of the considered opinion that it would sub-serve the interest of justice if the impugned order is quashed and set aside and the Petitioner is provided one opportunity to commence the proceedings at and from the stage on the day the impugned order was passed.

11. Accordingly, the petitions are allowed. The impugned order dated 30.05.2022 passed by the learned Trial Court is quashed and set aside. Suit is restored to its original number and the learned Trial Court is directed to proceed in accordance with law, from that stage.

12. This would, of course, be subject to costs of Rs.10,000/- in each of the petitions to be paid by the Petitioner to the Respondent.

13. Petitions are disposed of in above terms.

14. Parties may appear before the learned Trial Court on 10.01.2023.

TUSHAR RAO GEDELA, J

DECEMBER 20, 2022/yg