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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1275/2022 & CM APPL. 50380/2022, CM APPL. 50381/2022

SH SURJEET SINGH VIRDI Petitioner
Through: Mr. Vinod Pal and Mr. Ravinder Sharma, Advs.

versus

SH JASVINDER SINGH
BITTO CHAUDHARY Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **23.11.2022**

1. The impugned order dated 9th November 2022, passed by the learned District Judge (Commercial Courts) ("the learned Commercial Court) in CS(Comm) No.424/2022 (*Jasvinder Singh @ Bitoo Chaudhary v. Surjeet Singh Virdhi*), refuses to take, on record, the written statement filed by the petitioner, as the defendant in the suit, on the ground that the written statement was filed beyond the period of 30 days from the date of service of summons in the suit, without any application for condonation of delay.

2. The petition avers that the impugned order is factually erroneous, as the summons, as served, did not enclose therewith, a compact disk (CD), filed with the plaint. The said CD, it is alleged, was supplied to the petitioner only after the written statement was filed by him. As such, Mr. Vinod Pal, learned Counsel for the petitioner, submits that the learned Commercial Court was in error in

observing that the written statement had been filed beyond time.

3. That, however, would be a ground which would first have to be taken before the learned Commercial Court, as if it is correct, the petitioner may be justified in seeking a review in the order dated 9th November 2022.

4. I deem it appropriate, therefore, to dispose of this petition with the following directions:

(i) On 26th November 2022, the petitioner shall present a review petition, seeking review of the impugned order dated 9th November 2022, before the learned Commercial Court. The learned Commercial Court is requested to decide the review petition. The review petition shall be restricted to the aforesaid ground urged by the petitioner before this Court, i.e. the summons in the suit, as received by him, were not accompanied by all enclosures and annexures to the suit.

(ii) The learned Commercial Court would take a view on the petitioner's review petition after following due process in that regard.

(iii) Recording of evidence by the learned Local Commissioner appointed by the learned Commercial Court would, therefore, be deferred to a date after the learned Commercial Court takes a view on the petitioner's review petition. The date would be fixed by the learned Commercial Court.

5. This petition stands allowed to the aforesaid extent with no order as to costs. Miscellaneous applications are also disposed of.

C.HARI SHANKAR, J

NOVEMBER 23, 2022

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