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

% Judgment delivered on: 21.12.2022

+ CM(M) 754/2018 and CM APP No. 26912/2018

M/S ICICI BANK LTD

..... Petitioner

versus

M/S WINNER CONSTRUCTION PVT LTD Respondent

Advocates who appeared in this case:

For the Petitioner : Mrs. Chetna Bhalla and Mr. Kartik Bhalla,
Advocates

For the Respondent : Mr. Ankur Mahindro, Mr. Shresth
Choudhary and Mr. Aditya K., Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 26.05.2018 whereby the application under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (CPC) was dismissed on the ground of insufficient reasons to explain non-appearance and delay in filing the application under Order IX Rule 7 CPC.

2. Learned Trial Court has examined the issue in detail and has come to a firm conclusion that the Petitioner has not been able to

explain the reasons for delay much less the sufficient cause for such non-appearance.

3. Learned counsel appearing for the Respondent submits that there is no reason much less a justifiable reason for interfering with the impugned order in as much as there is no material irregularity or illegality committed by the Trial Court while passing the impugned order.

4. Mr. Mahindro, learned counsel for the Respondent submits that the impugned order is sustainable in law and may not be interfered with.

5. This Court has considered the rival submissions of the parties and is of the firm opinion that the application under Order IX Rule 7 of the CPC need to be construed a little more liberally so as to ensure that the *lis* between the parties is decided on merits rather than on technicalities. The Court also is of the opinion that catena of judgments right from the judgment of the Supreme Court in the case of *Collector, Land Acquisition vs. Mst. Katiji and Ors.*, 1987 SCR (2) 387, have laid down that such applications ought to be construed liberally and the parties must be permitted to contest their cases on merits.

6. In that view of the matter, impugned order dated 26.05.2018 is quashed and set aside subject to the Petitioner paying to the Respondent costs of Rs.50,000/- within two weeks from today. Petitioner would be deemed to have joined the proceedings on and from 11.03.2014 when the Court had proceeded it *ex parte*. Thereafter, the learned Trial Court may proceed in accordance with law.

7. With the aforesaid, the petition and the application filed herewith are disposed of.

8. In view of the fact that the original suit is pending since 23.01.2013, it would be in the interest of justice to direct the learned Trial Court to dispose of the suit expeditiously, not later than nine months from the date of receipt of the order.

9. Though it is informed that suit is listed for consideration before the learned Trial Court on 11.01.2023, written statement to be filed on behalf of the Petitioner may be submitted to the Court with an advance copy to the counsel for the Respondent on or before 30.01.2023 and the same is directed to be taken on record.

TUSHAR RAO GEDELA, J

DECEMBER 21, 2022/yg