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

+ **RFA(COMM) 13/2023**

**M S CICO TECHNOLOGIES LIMITED THROUGH ITS
AUTHORIZED REPRESENTATIVE MR. SANDEEP
CHATTERJEE**

..... APPELLANT

Through: Ms. Ranjani Sharma, Mr. Utsav
Trivedi, Mr. Himanshu Sharma, and
Mr. Piyush Tiwar, Advocates

versus

**MS ANITA AGARWAL PROPRIETOR OF M/S SHRI MAHADEV
INDUSTRIES**

..... RESPONDENT

Through: None

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Date of Decision: 21st August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Today, learned counsel for the Appellant-Plaintiff has handed over in Court an affidavit of service. In the said affidavit it has been stated that the Respondent has been served with summons by Post, WhatsApp and Email. The said affidavit is taken on record.

2. Consequently, this Court has no other option but to proceed ex-parte against the Respondent-Defendant.

3. It is pertinent to mention that the present appeal has been filed challenging the order dated 19th September, 2021 passed by the learned

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District Judge in *CS (COMM) 378/2021*, whereby the suit was dismissed on the ground of limitation.

4. Learned counsel for the Appellant-Plaintiff states that the Appellant-Plaintiff and the Respondent-Defendant were maintaining current, running and non-mutual account and the last transaction between the parties happened on 31st August, 2017 i.e. date of last delivery of products by the Appellant-Plaintiff to the Respondent-Defendant. She states that the period of limitation for filing the suit would start running from 1st January, 2018 and was supposed to end on 1st January, 2021. She, however, states that in view of the order of the Supreme Court in ***In Re: Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3 of 2020*** the period from 15th March, 2020 till 28th February, 2022 has to be excluded for calculating the limitation. She further states that the Appellant-Plaintiff had moved an application on 6th March, 2021 for pre-institution mediation where the Respondent-Defendant did not appear and the non-starter report dated 13th July, 2021 was issued. According to her, if this period is also excluded then the suit will be within limitation.

5. A perusal of the paper book reveals that the Appellant-Plaintiff had relied upon the Supreme Court order dated 23rd March, 2020 in ***Suo Moto Writ Petition (C) No. 3 of 2020*** in its plaint. However, the said aspect has not been even referred to, leave alone, dealt with by the learned District Judge, Commercial Court, South-East District, Saket Courts, New Delhi in the impugned order.

6. This Court is also of the view that even if the aforesaid Supreme Court order had not been referred to in the plaint, the Trial Court should have taken judicial notice of the same as it is a very widely circulated order.



7. Consequently, the present appeal is allowed and the matter is remanded back to the Trial Court for a fresh consideration on merits. The Appellant-Plaintiff shall be entitled to refund of the Court fees paid for filing the present appeal.

MANMOHAN, J

MINI PUSHKARNA, J

AUGUST 21, 2023
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