

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

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Date of Decision: May 23, 2023

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+ **RFA(COMM) 46/2023, CM APPL. 26910/2020**

M/S FAIRGROWTH SALES PVT. LTD.

..... Appellant

Through: Mr. Pradeep Chhindra, Mr. Rajan Chawla, Ms. Pooja Joshi and Mr. Sumit Nagpal, Advocates.

versus

M/S REAL INNERSPRING TECHNOLOGIES
PVT. LTD.

..... Respondent

Through: Mr. Gautam Dutta, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. This appeal has been filed challenging judgment and decree dated March 11, 2020, in CS (COMM) No. 214/2019 passed by learned District Judge (Commercial Court), East District, Karkardooma Court, whereby learned District Judge has decreed the suit in favour of the respondent herein and against the appellant for a sum of Rs. 46,23,040 /- along with interest at the rate of 7% per annum from the date of filing of the suit till the realization of the decretal amount.

2. When the appeal was listed on October 21, 2020, this Court, subject to the Appellant depositing 50% of the decretal amount with the Registrar General of this Court, had stayed the operation of the judgment and decree till the next date of hearing. The said order had been confirmed and directed

to be continued during the pendency of the appeal, on May 20, 2022.

3. As per the Office noting dated November 09, 2020, following has been stated by the Registry with regard to the deposit made:-

“May kindly see office note of Civil-Ill Branch dated 06.11.2020 (received by Cash- II Branch on 09.11.2020) whereby the Civil-Ill Branch has forwarded the case file along with a Demand Draft No. 956886 dated 27.10.2020 for Rs.23,11,520/- for further necessary action in terms of order dated 21.10.2020.

Reference order dated 21.10.2020 and office order No.750/E-V/Estt.-II/DHC dated 28.11.2015, a Demand Draft No. 956886 dated 27.10.2020 for Rs.23,11,520/- (Rupees Twenty Three Lakh Eleven Thousand Five Hundred Twenty only) drawn on Canara Bank, Khar, Mumbai - 400052 may be sent to UCO Bank, Delhi High Court Branch for obtaining FDR for a period of one year in the name of the Registrar General, High Court of Delhi in automatic renewal mode.

DFA is added accordingly, if approved, may issue please.”

4. It is submitted by learned counsel for the appellant that let the learned District Judge consider the appellant's leave to defend, if permitted to be filed, and pending the decision, amount deposited, be retained in this Court. The submission made by counsel for the appellant is that due to the delay in filing the appearance by 34 days, the learned District Judge has decreed the suit. According to him, the reasons for not filing the appearance on time have been spelt out in paragraph 3 of the application seeking condonation of delay, while filing the appearance before the learned District Judge, which we reproduce as under:

“3. That the summons in the present Suit were served upon the Defendant on 30.10.2018, however the Defendant could not entered appearance either by itself or through its Counsel within the said stipulated ten days from the date of service on summons on it due to following reasons:

(i) That Sh. Tejinder Pal Singh Madan, the director of the Defendant Company on 28.10.2018 suffered Slip Disc and was diagnosed with acute Lumbosacral strain with Slip Disc L4-L5, L5-S1 with severe radiculopathy and has been advised complete bed rest by the doctor for one month for further recovery. The medical certificate issued by Dr. Umesh Shetty is annexed herewith and marked as ANNEXURE A-1.

(ii) That since the said Sh. Tejinder Pal Singh Madan, suffered from Slip Disc, he had stopped attending his office from 28.10.2018.

(iii) That on 30.10.2018 one of the office staff of Sh. Tejinder Pal Singh received the said summons in the aforesaid suit on behalf of Sh. Tejinder Pal Singh and kept the same in his possession.

(iv) That since the said director of Defendant Sh. Tejinder Pal Singh was not coming to his office the said staff who received the said summons also forgot to discuss about the same with the said director.

(v) That after recuperating though partially from the said illness Sh. Tejinder Pal Singh could only resume his office on 26.11.2018. On resuming the said director of the Defendant asked his office staff about any correspondence which he received during his absence and other important information, the said office staff then showed the said summons along with the copy of the plaint to him.

(vi) That on enquiry from his said staff as to why he couldn't inform him about the receiving of the same summons, the

said staff felt sorry and said that he thought he would inform to the said director within a day or two of receiving the same, however he forgets thereafter.

(vii) That Sh. Tejinder Pal Singh to know about the nature of the suit and consequences of the said summons thereafter contacted his lawyer based in New Delhi, who asked Sh. Tejinder Pal Singh to send the copy of the said summons and copy of the plaint to his office.

(viii) That the counsel for the defendant received the said summons along with the copy of the plaint in his office on 30.11.2018. The office of the Counsel was closed on 01.12.2018 and 02.12.2018 and therefore the said Counsel had the opportunity to go through the said summons and plaint only on 03.12.2018.

(ix) That after perusal of the same the said Counsel for the Defendant apprised his Client on 04.12.2018 about the nature of the suit and the procedure to be followed in the same and the period of ten days to enter appearance has already been over.

(x) That counsel for the Defendant then suggested his Client Sh. Tejinder Pal Singh that since it is a bonafide mistake. therefore the present application has to be moved along with the address for receiving of notice / summons for further proceedings.

(xi) The Counsel for the Defendant then got the present application ready by 08.12.2018 and sent the same to Sh. Tejinder Pal Singh for signing and to furnish other relevant documents.

(xii) That the Counsel for the Defendant received the present application duly signed along with duly attested vakalatnama on 13.12.2018 in his office from Sh. Tejinder Pal Singh who is based in Mumbai.”

5. Today before us, the learned counsel for the appellant has drawn our

attention to the certificate issued by the Doctor, whereby the Doctor has advised the Director of the appellant company minimal physical exertion and physiotherapy for a period of one month. He additionally states, the summons were received by an office boy on October 30, 2018, which was brought to the notice of the Director Sh. Tejinder Pal Singh only on November 26, 2018, and immediately thereafter, along with an application for condonation of delay the appearance was filed.

6. Though, learned counsel for the respondent would contest the grounds urged by the counsel for the appellant before the learned District Judge and even before us seeking condonation of delay in filing appearance, when it was put to him whether he would be agreeable, if this Court permit the appellant to file the leave to defend the suit to which a reply can be filed by the respondent herein for a decision by the learned District Judge, on the same by retaining the amount which has been deposited by the appellant in this Court in terms of order dated October 21, 2020, he on instructions is agreeable to the same.

7. If that be so, we set aside the Judgment/decreed dated March 11, 2020, of the learned District Judge and remand the matter back to the learned District Judge (Commercial Court), East District, Karkardooma Court, subject to the appellant filing leave to defend within two weeks from today and also granting two weeks to the respondent herein to file reply to the leave to defend, which shall be considered and decided by the learned District Judge in accordance with law.

8. Accordingly, we fix the date of hearing before the learned District Judge as July 04, 2023.

9. The Appeal is disposed of. Pending application, if any, also stands

disposed of.

10. The amount deposited in this Court in terms of order passed by this Court on October 21, 2020, shall continue to be retained in this Court and shall be subject to the further orders to be passed by learned District Judge in CS (COMM) No. 214/2019.

11. Counsel for the parties are given liberty to place this order on the Board of learned District Judge by way of an affidavit.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 23, 2023/R

