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

% Judgment delivered on: 11.05.2023

+ CM(M) 782/2023

RAJU SARKAR

..... Petitioner

versus

VINAY SARKAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Mohd. Anas, Advocate

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]

CM APPL. 24390/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 782/2023 & CM APPL. 24389/2023 (Stay)

3. The petitioner challenges the order dated 24/25.01.2023 in CS DJ No. 282/2022 titled '*Vinay Sarkar Vs. Raju Sarkar*' whereby the petitioner / defendant was granted conditional leave to defend subject to the deposit of Rs.1,05,000/- with the Registry of the Trial Court in the form of fixed deposit with the automatic renewal clause. The said direction was to be complied within four weeks from the date of the impugned order i.e. 24/25.01.2023

4. Learned counsel appearing for the petitioner submits that on account of the financial incapability, the petitioner was unable to deposit the said amount and consequently vide the order dated 03.04.2023, the learned Trial Court closed the right of the defendant to contest the suit for non-compliance.

5. After some arguments, Mr. Anas, learned counsel appearing for the petitioner submits that the petitioner would be willing to make the deposit of the said amount and prays that the order dated 03.04.2023 whereby the right to contest the suit was closed be set aside.

6. Keeping in view of the submissions made by learned counsel appearing for the petitioner in respect of the financial incapacity of the petitioner as also in the view that no party should be relegated to a situation where it cannot contest the suit on merits, this Court is of the opinion that to subserve the interest of justice, the petitioner be directed to deposit a sum of Rs.1,05,000/- as directed vide the order dated 24/25.01.2023 within two weeks from today, failing which the order dated 03.04.2023 whereby the right to contest the suit was closed, shall stand resurrected.

7. It is been informed that the matter is listed today before the learned Trial Court for further proceedings.

8. Learned Trial Court is requested to permit the petitioner to defendant / petitioner to file its written statements within two weeks from today along with the deposit as aforesaid in terms of order dated 24/25.01.2023.

9. It is made clear that the said written statement will be taken on record and the petitioner will be permitted to contest the suit only once the deposit has been made within the time line aforesaid.
10. The petition is disposed of with no order as to costs.
11. Pending application also stands disposed of.

MAY 11, 2023/ms

TUSHAR RAO GEDELA, J .

