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

% Judgment delivered on: 15.05.2023

+ CM(M) 788/2023

DEEPAK AGGARWAL Petitioner

versus

MUKESH AGGARWAL & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Anil Kumar Khaware, 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. 24610/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The petitioner challenges the order dated 03.04.2023 and 26.04.2023 in CS DJ 179/2020 titled '*Deepak Aggarwal Vs. Mukesh Aggarwal*' whereby the request made by the petitioner that the matter be taken up for appearance of the petitioner in the last week of May, 2023 was not allowed and the matter was listed for the personal appearance of

the petitioner on 03.08.2023.

4. Learned counsel appearing for the petitioner submits that the petitioner is a resident of USA and while adjudicating an application under Order VII Rule 11 CPC, 1908, the Trial Court felt the need for personal appearance of the petitioner and had directed so.

5. Learned counsel submits that since the petitioner was able to take leave and book his tickets for 20.05.2023 to visit India, the petitioner had made a request to the Trial Court through his counsel by filing an application to permit the petitioner to appear before the learned Trial Court in the last week of May, 2023. Learned counsel submits that though the application was accompanied with the details as also the tickets which were taken by the petitioner to visit India, the learned Trial Court has not considered the same.

6. Having considered the submissions made by learned counsel appearing for the petitioner as also the status of the proceedings, in that, the Trial Court was presently adjudicating an application under Order VII Rule 11 CPC, the interests of justice would have been subserved in case the Trial Court had examined the request sympathetically. However, without passing any observations on the impugned order, this Court deems it fit to request the Trial Court to reconsider the said application sympathetically having due regard to the fact that it would be inconvenient for the petitioner to visit India again in the month of August, 2023 when the matter is listed before the learned Trial Court.

7. Learned Trial Court is requested to take up the application once again and re-consider its decision, keeping in view the difficulties and financial implications it will have on the petitioner.

8. Learned Trial Court may also keep in mind that the presence is required only for the purpose of adjudication on application under Order VII Rule 11 CPC.

9. The petition is disposed of with aforesaid directions to the learned Trial Court.

10. The Trial Court shall also take into consideration the alternate prayer of allowing the petitioner to appear through Video Conferencing if it deems it fit and appropriate in the facts of the present case.

11. A copy of this order be given *dasti* under the signatures of Court Master.

TUSHAR RAO GEDELA, J .

MAY 15, 2023/ms

