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

% *Date of Decision: 28.07.2023*
 + **RFA(COMM) 151/2023 & CAV 369/2023, CM APPL.**
36977/2023, 36978/2023, 36979/2023 & 36980/2023
TEERTHANKAR MAHAVEER

UNIVERSITY Appellant
 Through: Mr. Ruchin Midha, Adv.
 versus
 CORPORATESERVE SOLUTIONS PRIVATE
 LIMITED Respondent
 Through: Mr. S.K. Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 36976/2023

1. This is an application seeking condonation of delay in filing the appeal.
2. For the reasons stated in the application, the same is allowed.

RFA(COMM) 151/2023 & CAV 369/2023, CM APPL. 36977/2023,
36978/2023, 36979/2023 & 36980/2023

3. The appellant has filed the present appeal against an *ex parte* judgement and decree dated 17.08.2022 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in CS (Comm) No.38/2021. The said suit was instituted by the respondent (plaintiff in the said suit) for recovering an amount of ₹37,87,600/- (Rupees Thirty-



Seven Lakhs Eighty-Seven Thousand and Six Hundred Only) along with interest at the rate of 18% per annum. The respondent, *inter alia*, claims that the said amount was due on account of ERP software provided to the appellant. The appellant had resisted the said claim and also filed a written statement. In addition, the parties had also filed their affidavits of admission/denial of documents. However, the appellant was proceeded *ex parte* by an order dated 04.05.2022 passed by the learned Commercial Court, as the appellant (defendant) was unrepresented.

4. The appellant filed an application dated 30.09.2022 under Order 9 Rule 13 of the Code of Civil Procedure, 1908 before the learned Commercial Court for setting aside the *ex parte* impugned judgment; however, the same was rejected by an order dated 30.05.2023, which is also impugned in the present appeal.

5. It is the appellant's case that on 05.04.2022, the learned counsel engaged by the appellant did not appear as he was held up at the learned National Consumer Disputes Redressal Commission (NCDRC). The learned counsel had also provided the details of his appearance before the learned NCDRC on the said date. The proceedings were then adjourned to 04.05.2022.

6. It is further explained that the counsel for the appellant had shifted his office from B-3/15, Second Floor, Safdarjung Enclave to 804, Saraswati Tower 2, D6, Vasant Kunj on 01.05.2022 and that in the process of shifting, the main register in which the pending cases and



their status were noted was displaced. The learned counsel had explained that listing of the suit on 04.05.2022 was completely overlooked by him, as he had not recorded the date of hearing in his diary.

7. The learned Commercial Court has not accepted the appellant's explanation, *inter alia*, on the ground that the counsel's website did not show that the learned counsel had shifted his office. The learned Commercial Court had also made observations to the effect that the appellant was lackadaisical in defending the suit and had also not provided copies of the documents as directed earlier.

8. The learned Commercial Court rightly observed that commercial suits are required to be disposed of in an expeditious manner and that such delay cannot be countenanced. However, we are unable to accept that the appellant's explanation that his counsel had shifted his office, ought to have been disregarded.

9. The appellant's counsel stated that his website was not updated. He was present in Court and had tendered the said explanation. He is also present before us and reiterates that he has shifted his office. The learned counsel appearing for the respondent had resisted the present appeal, however, he does not dispute that the learned counsel had, in fact, shifted his office as stated by him.

10. In view of the above, we are of the considered opinion that the apposite course is to allow the appellant's application for setting aside the *ex parte* impugned judgement *albeit* with costs.



11. We are of the view that costs of ₹1,00,000/- would be appropriate in this case. The learned counsel appearing for the appellant also accepts the same.

12. In view of the above, the present appeal is allowed and the *ex parte* impugned judgement as well as the order dated 30.05.2023 passed by the learned Commercial Court rejecting the appellant's application for setting aside the impugned judgement are set aside. This is subject to the appellant paying a cost of ₹1,00,000/- to the respondent within a period of two weeks from today.

13. Subject to the costs being paid, the suit would be restored before the learned Commercial Court for deciding on merits after affording the appellant an opportunity to be heard.

14. The learned counsel appearing for the appellant undertakes on behalf of the appellant that no unwarranted adjournment would be sought by the appellant.

15. The appeal is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 28, 2023

Ch

[Click here to check corrigendum, if any](#)