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

Date of decision: 04.10.2023

+ **CM(M) 1615/2023 & CM APPL. 50932/2023**

VED PRAKASH JAIN

..... Petitioner

Through: **Mr. Sanjay Mani Tripathi and Mr. Suraj Kumar Singh, Advocates**

versus

L & V ENTERPRISES & ORS.

..... Respondents

Through: **None**

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 50933/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1615/2023 & CM APPL. 50932/2023

1. This petition impugns the order dated 21.08.2023 passed by the Senior Civil Judge acting as Rent Controller, South East, Saket Courts, New Delhi in Misc. SCJ No.62/2023 ('Trial Court') whereby the Trial Court vacated the stay earlier granted vide order dated 29.05.2023, as regards the operation of the ex-parte judgment and decree dated 05.04.2021 passed in Civil Suit No.1192 of 2020 ('civil suit')

1.1. The Petitioner is the original defendant and the Respondent is the original plaintiff in the civil suit.



2. The learned counsel for the Petitioner states that after the decree dated 05.04.2021 was passed in the aforesaid civil suit, the Respondent no. 1 had filed an Execution Petition bearing no. 516/2021, due to which the Petitioner was constrained to prefer an application bearing Misc. SCJ No.62/2023 under Order IX Rule 13 read with Section 151 CPC for setting aside the ex-parte judgment and decree dated 05.04.2021.

1.2. He states that after the preliminary hearing the Trial Court vide order 29.05.2023 was pleased to grant stay of the ex-parte decree dated 05.04.2021.

1.3. He states that the Trial Court has vacated the stay on account of the non-compliance of the mandatory provisions of order XXXIX Rule 3 of Civil Procedure Code, 1908 ('CPC') by the Petitioner herein.

1.4. He states the matter is listed before the Executing Court on 13.10.2023.

3. At the outset, learned counsel for the Petitioner states that he tenders an unconditional apology for non-compliance of the mandatory provisions.

4. He states that the order be restored until 10.10.2023 i.e., the next date fixed before the Trial Court for arguments under Order IX Rule 13 CPC. He states that though process fee was filed and the plaintiff was duly served for the returnable date, there was default in complying with the compliance. He states that the plaintiff has been served and the matter is listed for arguments on the next date.

4.1. He states that the Petitioner herein undertakes that no adjournment will be sought by the Petitioner before the Trial Court on the next date and he will remain duly represented through a counsel to ensure that the arguments are duly addressed and heard by the Trial Court in the said application.

5. None appears on behalf of Respondent No. 1, despite advance service.

6. In view of the fact that Respondent No. 1 has entered appearance before



the Trial Court and filed its reply; and the matter/application is listed for arguments, this Court deems it appropriate to extend the stay order granted by the Trial Court vide order dated 29.05.2023 until 10.10.2023.

7. The impugned order dated 21.08.2023 is set aside on following conditions: -

7.1. The stay order has been extended subject to the Petitioner herein paying legal costs of Rs. 10,000/- to the Respondent No. 1 on or before 10.10.2023.

7.2. The Petitioner shall remain duly present on the next date of hearing before the Trial Court i.e., 10.10.2023 to address arguments on his application and not seek any adjournment until the said application is decided.

7.3. In case costs are not paid and/or any adjournment is sought the stay shall stand vacated automatically.

8. It is made clear that any further extension of the stay order shall be at the discretion of the Trial Court on 10.10.2023.

9. With the aforesaid directions, the present petition is allowed.

10. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 4, 2023/rhc/ms

Click here to check corrigendum, if any