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

Date of decision: 06.12.2023

+ CM(M) 1920/2023

NEW MODERN TECHNOMECH PVT LTD Petitioner
Through: Ms. Mrinmoi Chatterjee, Advocate

versus

SABARI KRISHNA ENTERPRISE & ANR. 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. 60014/2023 (For Exemption)

Exemptions allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 1920/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 03.05.2023 passed by the District Judge, Commercial Court – 02, South East District, Saket Courts, New Delhi ('Trial Court') in Misc. DJ No. 774/2023, titled as '**New Modern Technomech Pvt. Ltd. v. Sabari Krishna Enterprises**' whereby the Petitioner's application filed under Order IX Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') seeking restoration of the suit bearing CS (COMM.) No. 602/2022, has been dismissed.

1.1. The Petitioner is the Applicant/plaintiff and the Respondents are the



defendants in the suit. The commercial civil suit was filed by the plaintiff under Order XXXVII of CPC seeking recovery of Rs. 15,92,143/-.

1.2. The Petitioner's suit was dismissed in default for non-prosecution by the Trial Court on 08.02.2023, in view of the non-compliance of Trial Court's earlier orders directing Petitioner to deposit process fee and costs of Rs. 4,000/- with the DLSA, South East District, Saket Courts.

2. At the outset, learned counsel for the Petitioner states that the Petitioner tenders its unconditional apology for not taking steps for service of summons on the defendant in pursuance of the Trial Court's orders dated 07.09.2022, 17.11.2022 and 21.12.2022.

2.1. She states that however, the costs imposed by the Trial Court vide order dated 21.12.2022 has since been deposited by the Petitioner on 10.03.2023.

2.2. She states that there was a delay in complying with the order of 21.12.2022; however, the Trial Court has jurisdiction to condone the said delay.

2.3. She states that the counsel for the Petitioner was unable to appear in the proceedings on 08.02.2023 due to difficulty in tracing the VC link of the concerned Court.

2.4. She states that the Petitioner herein is willing to forgo the claim of *pendente lite* interest for the period of November, 2022 to December, 2023 on account of the delay by the plaintiff in taking steps for issuance of summons in the suit proceedings.

3. This Court has considered the submissions of the counsel for the Petitioner and perused the affidavit dated 04.12.2023.

4. In the interest of justice, the impugned order dated 03.05.2023 and



order dated 08.02.2023 are hereby set aside and the suit is restored to its original number, subject to following conditions:

- (i) The Petitioner will appear before the Trial Court on 21.12.2023.
 - (ii) The Petitioner will deposit cost of Rs. 10,000/- before DLSA/SE/Saket Courts within a period of ten (10) days.
 - (iii) The Petitioner will not be entitled to claim of *pendente lite* interest for the period starting from 01.11.2022 to 31.12.2023, since the Petitioner has been negligent in prosecuting the suit during this period.
 - (iv) The Petitioner shall remain duly represented before the Trial Court on each date of hearing and in case, the Petitioner defaults in its representation, the Trial Court will exercise its jurisdiction under Order XVII of CPC.
5. The Petitioner is directed to file an appropriate application before the Trial Court along with this order within two (2) weeks for listing of the suit on 21.12.2023.
6. The learned Trial Court is requested to issue appropriate directions for issuance of fresh summons to the defendant on the said date. The Petitioner will place the affidavit dated 04.12.2023 on the record of the Trial Court and the Trial Court is requested to make note of this undertaking of the Petitioner with respect to the waiver of *pendente lite* interest for the period of 01.11.2022 to 31.12.2023 in its fresh order issuing summons.
7. The petition stands allowed in the aforesaid terms. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 6, 2023/rhc/aa