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

% Judgment delivered on: 27.01.2023

+ CM(M) 529/2017, CM APPL. 16000/2017 & CM APPL. 16001/2017

AJAY KUMAR GUPTA Petitioner

versus

M/S R C BUILDTECH PVT LTD & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Bipin Kumar, Advocate along with petitioner in person.

For the Respondents : Mr. Vinod Kumar Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the impugned orders dated 14.10.2016 as well as 31.01.2017 passed by the learned Trial Court in M.No. 158226/2016 passed in Suit No. 740/2014 titled "*Ajay Kumar Gupta vs. M/S R C Buildtech Pvt. Ltd. & Ors.*", whereby the application under Order 9 Rule 13 was allowed in favour of the respondent, who was defendant before the learned Trial Court, subject to a cost of Rs. 50,000/- to be paid to the petitioner.

2. Petitioner also challenges the order dated 31.07.2017, whereby an application under Order 8 Rule 1 CPC, 1908 filed on behalf of

respondent/ defendant was also allowed and the cost imposed on 14.10.2016 was decreased to Rs. 30,000/-.

3. Learned counsel appearing for the respondent/ defendant submits that this cost of Rs. 30,000 as imposed *vide* order dated 31.01.2017 stands paid to the petitioner.

4. Learned counsel appearing for the petitioner submits that the application under Order 9 Rule 13 was based on false and frivolous grounds and the order dated 14.10.2016 had considered the stand taken by the respondent/ defendant and allowed it subject to cost of Rs. 50,000/-.

5. Learned counsel submits that the respondent was duly served on the first occasion, whereby an *ex parte* judgment and decree was passed and there was no occasion for the learned Trial Court to consider the false pleas raised in the application under Order 9 Rule 13 of the CPC, 1908.

6. Learned counsel further submits that the written statement as directed *vide* order dated 14.10.2016 was not filed on time and application under Order 8 Rule 1 of the CPC, 1908 was filed by the defendant in violation of the specific directions given in the order dated 14.10.2016.

7. Learned counsel submits that despite bringing this to the notice of the learned Trial Court. The learned Trial Court *vide* order dated 31.01.2017 not only allowed the application under Order 8 Rule 1 CPC but also at the same time decreased the cost of Rs. 50,000/- to Rs. 30,000/- only.

8. Learned counsel admits having received the sum of Rs. 30,000/-

as stated by learned counsel for the respondent above.

9. Learned counsel appearing for the petitioner draws attention of this Court to page 101 of the paper book which is annexure A-12, which is the application filed on behalf of the respondent under Order 9 Rule 13 CPC and particularly to page 110 containing para 14, whereby the respondent has admitted having received total amount of Rs. 5,44,000/-, in two tranches of Rs. 2,94,000/- on 19.05.2009 as well as Rs.2,50,000/- on 29.11.2009. Pointing to this particular paragraph, learned counsel submits that there is an admission of having received such amounts by respondent Nos. 1 and 2, and as such, the same would attract the principles of provisions under Order 12 Rule 6 CPC and ought to be returned forthwith.

10. Per contra, learned counsel appearing for the respondent submits that apart from the amount as admitted in the aforesaid paragraphs of the application under Order 9 Rule 13, the respondent disputes the other amounts which the petitioner claims to have paid by cash to the respondent.

11. Be that as it may, the present petition has been hanging fire from the year 2017 on the application under Order 9 Rule 13 CPC having been allowed by the learned Trial Court.

12. This Court exercising the powers of the Civil Court under Order 12 Rule 6 CPC, directs the respondent to pay an amount of Rs. 5,44,000/- to the petitioner within thirty days from today.

13. This Court is refraining from calculating the interest on the aforesaid amount leaving it for the learned Trial Court to decide the same in accordance with law during trial.

14. Subject to the aforesaid amount being paid within the stipulated period of thirty days, the Trial Court shall proceed in accordance with law with the suit as was the status obtaining on 31.01.2017.
15. Learned Trial Court shall commence the proceeding stated to be listed on 31.01.2023 from the proceeding it left as obtaining on 31.01.2017.
16. In case of failure of payment of the aforesaid amount, the orders dated 14.10.2016 as well as 31.01.2017, in the facts and circumstances of this case, shall be deemed to be quashed and set aside and the ex parte order and judgment and decree dated 21.08.2015 shall stand revived.
17. This is without prejudice to the rights and contentions of both the parties in respect of the balance amount, if any, as also the interest, if any, to be adjudicated upon by the learned Trial Court during trial.
18. The aforesaid amount, if paid, shall be taken into consideration by the learned Trial Court at the time of final hearing of the suit and decree by drawn up accordingly giving due benefit of the same to the respondent/defendant.
19. The present petition stands disposed off in above terms.

TUSHAR RAO GEDELA, J .

JANUARY 27, 2023/nd