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

+ **FAO (COMM) 45/2024**

ANAMIKA PRAKASHAN

..... Appellant

Through: Mr Utkarsh and Ms Anshu Priyanka,
Advocates.

versus

VANI PRAKASHAN & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

13.03.2024

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[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 15450/2024

1. Allowed, subject to just exceptions.

CM APPL. 15448/2024 *[Application filed on behalf of the appellant seeking condonation of delay of 10 days in filing appeal]*

2. This application has been filed on behalf of the appellant seeking condonation of delay in filing the appeal.

2.1 According to the appellant, there is a delay of 10 days.

3. Given the period involved, the delay is condoned.

4. The application is disposed of.

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5. This appeal is directed against order dated 20.12.2023.

6. Mr Utkarsh, who appears on behalf of the appellant says that if liberty

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is given to file an application under Order XXXIX Rule 4 of the Civil Procedure Code, 1908 [in short “CPC”], the appellant would be satisfied.

7. It is Mr Utkarsh’s argument that the *ex parte* interim order was passed for the first time on 05.12.2020, which was to continue till the next date of hearing, i.e., 05.01.2021.

7.1 According to Mr Utkarsh, thereafter, the order was not continued on 05.01.2021 and, subsequently direction for interim injunction was issued for the first time only on 24.07.2021.

8. We find from the record that Judges allocated this case changed from time to time as counsel for the parties, for one reason or the other, were not able to conclude arguments in the application preferred under Order XXXIX Rules 1 and 2 of the CPC by respondent no.1/plaintiff.

8.1 Notably, even on the day when the impugned order was passed, the main counsel for the appellant/defendant no.2 was not available. The appellant/ Defendant no.2 was represented by an Advocate who appeared as a proxy for the counsel-on-record for defendant no.2.

9. A perusal of the said order also shows that neither written submissions were filed, nor was a reply filed to the application under Order XXXIX Rule 2A of CPC.

10. We are told that the reply to the application under Order XXXIX Rule 2A of CPC was filed by the appellant/defendant no.2 on 17.02.2024. We are also informed that the said application is listed before the concerned Judge for hearing on 16.03.2024.

11. Given this position, the appeal is disposed of, granting liberty to the appellant/defendant no.2 to move an application under Order XXXIX Rule 4



of the CPC.

12. If such an application is moved, the concerned Judge will dispose of the same as per law, after giving an opportunity to the opposing party.

13. Pending application shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 13, 2024

at

Click here to check corrigendum, if any