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

% *Date of Decision: 23.04.2024*

+ **FAO (COMM) 114/2023 CM APPL. 27821/2023 CM APPL. 27823/2023 CM APPL. 11687/2024**

M/S SUPER SMELTERS LIMITED

..... Appellant

Through: Ms. Snachari Chakraborty, Adv. with
Mr. Devanshu Tahiry, Adv.

versus

RAMESH JINDAL

..... Respondent

Through: Mr. Shreshth Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

CM APPL. 27823/2023 [Condonation of delay]

1. For the reasons stated in the application, the same is allowed.
2. Application is disposed of.

FAO (COMM) 114/2023 & CM APPL. 27821/2023 [Stay]

3. The appellant has filed the present appeal impugning an order dated 17.02.2023 (hereafter *the impugned order*) passed by the learned Commercial Court whereby the appellant's application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) in C.S. (Comm) No.284 of 2019 captioned ***Ramesh Jindal v. M/s Super Smelters Limited*** was dismissed.



4. The respondent had filed the said suit for recovery of ₹ 4,96,387/- along with interest at the rate of 24% per annum. The respondent (plaintiff in the suit) claimed that he was engaged in the business of transportation under the name and style of his sole proprietorship concern, M/s Sunrise Carriers. It claimed that he provided the said services to the appellant (defendant in the suit) and had raised invoices for the same. The respondent claims that in terms of the said invoices, the same were required to be paid within a period of 45 days and any delay beyond the said period would be subject to interest at the rate of 2% per month.

5. The aforementioned suit was instituted on 30.11.2019 and summons were directed to be issued to the appellant on 25.02.2020. The next date of hearing was fixed on 13.04.2020. The impugned order indicates that the process issued to the appellant was not received back and, therefore, the “*service was ordered to be effected upon the defendant for 13.04.2020*”.

6. However, the matter could not be taken up due to the outbreak of COVID-19 on the date fixed. The suit was, thereafter, listed before the learned Commercial Court on 08.10.2020, however, none appeared on behalf of the respondent (plaintiff) and, therefore, the suit was dismissed in default.

7. The respondent filed an application dated 04.11.2020 under Order IX Rule 4 of the CPC for restoration of the suit, which was allowed. Thereafter, the learned Commercial Court issued directions for effecting service on the appellant with a returnable date of 10.12.2020. On 10.12.2020, the learned counsel for the parties appeared and the suit was directed to be relisted on



01.02.2021 for settlement. However, thereafter, the learned counsel for the appellant did not appear on several dates – 01.02.2021, 27.03.2021, 31.07.2021, 10.08.2021, 31.08.2021 and 05.10.2021. On 05.10.2021, the learned Commercial Court directed that the appellant be proceeded *ex-parte*.

8. The learned Commercial Court did not consider it necessary to record the *ex-parte* evidence as the appellant had not filed its Written Statement. The learned Commercial Court found that, in view of the Office Order passed by this Court on 08.04.2021, no adverse orders were to be passed, notwithstanding that the appellant had failed to appear. However, the said Office Order was withdrawn on 19.08.2021 and, accordingly, the learned Commercial Court had proceeded to render the *ex-parte* judgment/decreed on 11.01.2022, which was received by the appellant on 24.01.2022.

9. In the aforesaid background, the appellant filed an application under Order IX Rule 13 of the CPC seeking recall of the *ex-parte* decree on 02.03.2022, which was dismissed by the impugned order.

10. It is the appellant's case that it was proceeded *ex-parte* for no fault on its part as it had no knowledge that the earlier counsel had stopped appearing before the learned Commercial Court.

11. It is apparent from the plain reading of the impugned order that the learned Commercial Court had not considered the orders passed by the Supreme Court in *In Re: Cognizance For Extension Of Limitation Suo Motu Writ Petition (Civil) 03 of 2020*, whereby the limitation for filing any petition/suit/action/application/appeal or proceedings was extended. By virtue of order dated 10.01.2022, the period of limitation in respect of any



petition/suit/action/application/appeal or proceedings, which had expired during the period 15.03.2020 to 28.02.2022, was extended for a further period of 90 days. It is, thus, apparent that the time period for filing the written statement was extended by virtue of the orders passed by the Supreme Court. Therefore, the decision of the learned Commercial Court of closing the right of the appellant to file a written statement and proceeding *ex-parte*, is required to be reviewed.

12. The impugned order also indicates that the appellant's application under Order IX Rule 13 of the CPC was also rejected on the ground that it was barred by limitation. This finding is, *ex-facie*, erroneous as the time for filing applications was extended by the Supreme Court under various orders passed in ***In Re: Cognizance For Extension Of Limitation Suo Moto Writ Petition (Civil) 03 of 2020***, including the order dated 10.01.2022 as referred above.

13. Considering that the parties were severely handicapped in pursuing the legal proceedings during the period affected by the outbreak of COVID-19, this Court consider it apposite to allow the present appeal. The impugned order and the *ex-parte* decree dated 11.01.2022 are set aside.

14. The appellant may file its written statement within a period of thirty days from date. The suit is restored before the learned Commercial Court for further proceedings in accordance with law.

15. The parties shall appear before the learned Commercial Court/ Successor Court on 30.04.2024.



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

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 23, 2024
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