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

+ **CM(M) 2402/2024**

M/S DONEC APPARELS PRIVATE LIMITED Petitioner

Through: **Mr. Mohit Seth, Adv.**

versus

M/S GULSHAN GARMENTS

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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25.04.2024

CM APPL. 23904/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present petition under Article 227 of the Constitution of India has been filed seeking appropriate directions to the learned Trial Court i.e. learned District Judge (Commercial Court-06), Tis Hazari Courts, Delhi (“Trial Court”) in suit bearing no. CS(COMM) 246/2024 titled as “*M/s DONEC Apparels Private Limited vs. M/s Gulshan Garments*” to pass the order on issuance of summons to the respondent Company in terms of Order V of Code of Civil Procedure, 1908 (“CPC”).

4. Learned counsel submits that the petitioner being the plaintiff, had filed a commercial suit for recovery of Rs. 38,90,976/- on 08.02.2024 on the basis of invoices arising out of the transactions between the parties. However, the learned trial court is not following the provisions under Order



V of CPC as well as Order XI CPC as amended by the Commercial Courts Act, 2015 and has yet not been issued summons to the respondent company since the date of institution of the suit i.e. 08.02.2024.

5. Learned counsel further submits that on 16.02.2024, when the suit was listed for the first time before the learned trial court, it had directed the petitioner to produce original documents though the photocopies were appended with the suit. However, the learned Trial Court had passed the directions which were beyond the scope of Order V of CPC as well as Order XI CPC as amended by the Commercial Courts Act, 2015. Nonetheless, on the next date of hearing i.e. 04.03.2024, the petitioner carried the original documents, still the matter was adjourned by the learned trial court by observing that learned Judge was Officiating as Principal District & Sessions Judge (Hqs), Delhi and was taking care of the work related to it. Thus, the matter was postponed for consideration for 05.04.2024. On the said date again, though the original documents being brought by the petitioner were considered by the learned Trial Court but as the copy of MSME certificate was a computer generated one, therefore, the petitioner was directed to produce the certificate under Section 65 B of Indian Evidence Act, 1872.

6. It is further submitted that now the matter is coming up for hearing before the learned Trial Court on 08.05.2024. It is submitted that for the said date of hearing, directions be issued to learned Trial Court to issue the summons in the suit as per the prescribed procedure under the law.

7. Apart from the arguments, the orders passed by the learned Trial Court on the three dates of hearing have been perused.

8. In due consideration of the above, the learned Trial Court to hear the



matter on 08.05.2024 with respect to issuance of summons and to pass an order as per law.

9. With the above directions, the petition stands disposed of.

SHALINDER KAUR, J.

APRIL 25, 2024/ab