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

+ **C.R.P. 161/2024**

BHARAT BHUSHAN DUA & ANR. Petitioners

Through: Mr.Faizal Naseem, Ms.Deeksha
L.Kakar, Ms.Akansha
Choudhary and Mr.Rashneet
Singh, Advocates.

versus

DEEPAK SAWHNEY Respondent

Through: None.

**CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA**

% **ORDER**
22.05.2024

CM APPL. 31088/2024

1. Allowed, subject to all just exceptions.
2. The application shall stand disposed of.

C.R.P. 161/2024 and CM APPL. 31087/2024

3. The petitioner who is defendant in the suit under Order 37 CPC instituted by the respondent/plaintiff assails the impugned order dated 26.03.2024 passed by learned Presiding Officer, (Commercial Court 03) (South-East) Saket Courts, New Delhi.
4. None is present for the respondent despite sending advance notice.
5. It would be apposite to refer to the observations made by the learned trial court while deciding the application under Order XXXVII



Rule 3 CPC which goes as under :

8. The case of the plaintiff is based on the invoices as well as the ledger statement and long standing business relationship which was previously with proprietor ship firm, however, later on turned into partnership firm. Under Commercial Courts Act, the suit can be filed on the basis of photocopies. Ld. Counsel for the plaintiff submitted that plaintiff having possession of the original documents, therefore, mere non filing of the same do not in any manner could be the ground to reject the present suit under the Commercial Courts Act. The plaintiff besides the invoices also relied upon the email dated 19.11.2019 vide which the defendant sent the ledger account of Rajinder Xpress i.e. defendant's firm showing the balance liability of Rs.8,20,078.44/- which is also found matching with the balance liability till 14.06.2019 of Rs. 8,20,078/- filed by the plaintiff. The defendant, however, denied of sending the said email dated 19.11.2019, but bare denial is not sufficient at this stage. The defense that the second partner Ghanshaym Das is not made the party, do not in any way defeats the claim of the plaintiff. The present suit is based on invoices corroborating through ledger accounts, therefore, the suit is maintainable as summary suit under Order 37 CPC. (Relied upon M/s Lohmann Rausher Gmbh vs. Medisphere Marketing Pvt. Ltd. CS(OS) 953/2003 dated 13.01.2005). Considering admission of liability through the email dated 19.11.2019, the defendant is not entitled to unconditional leave to defend and liable to deposit Rs. 8,20,078/- in this court. Accordingly, in present facts and circumstances, leave to defend is granted to the defendant subject to deposit of an amount of Rs. 8,20,078/- in this court within one month. The application is disposed of accordingly.

6. Learned counsel for the petitioner has vehemently urged that the petitioner/defendant has denied that any e-mail dated 19.11.2019 was sent and/or there was any admission on his part to the outstanding due of Rs.8,20,078/- against the running account.

7. After some arguments learned counsel for the petitioner seeks permission to withdraw the present petition and seeks extension of time to make deposit of the said amount.

8. The petitioner is granted further period of one month to deposit the said amount in the Court, which will be converted into fixed



deposit for a period of two years, and extendable at the discretion of the learned Trial Court.

9. The petition along with pending application is disposed of accordingly without prejudice.

DHARMESH SHARMA, J.

MAY 22, 2024

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