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

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Date of Decision: 27.05.2024+ **RFA(COMM) 211/2024 & CM APPL. 32130/2024****INTERLINKS OVERSEAS PVT LTD & ORS. Appellants****Through: Mr Jagdeep Kumar Sharma, Adv.****versus****SOUTH DELHI PHARMA****..... Respondent****Through: Ms Swati Jindal Garg, Adv.****CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. With the consent of the counsel for the parties, the appeal is taken up for final hearing and disposal at this stage itself.
2. This appeal is directed against the judgment and order dated 04.04.2024, passed by the learned District Judge, Commercial Court-04, Central District, Tis Hazari Court, Delhi.
3. *Via* the impugned judgment, the learned District Judge dismissed the application filed by the appellant/defendant for condonation of delay under Order XXXVII Rule 3(7) of the Code of Civil Procedure, 1908 [in short, "CPC"].
4. The record shows that in the first instance, the respondent/plaintiff filed a summary suit under Order XXXVII of the CPC. This suit was,



admittedly, converted into an ordinary suit.

4.1 The record also discloses that the plaint was then returned to the respondent/plaintiff.

5. It was only thereafter, a fresh summary suit under Order XXXVII of the CPC was filed by the respondent/plaintiff.

6. Concededly, the summons in the summary suit, out of which the instant appeal arises, was served on the appellants/defendants on 09.02.2024.

7. The returnable date in the summons, fixed by the trial court, was 21.03.2024.

8. It appears that since the appellant no.2/defendant no.2 was on an official tour, there was some delay in touching base with the lawyer and entering appearance in accordance to the provisions of Order XXXVII of the CPC.

9. Admittedly, there is a delay of 30 days in entering appearance by the appellants/defendants.

10. Thus, given the fact that the appellants/defendants needed advice with regard to the next steps to be taken in the matter, which only an advocate could have given to them, we are inclined to entertain the appeal and therefore, set aside the impugned judgment and order.

10.1 It is ordered accordingly. The impugned judgment is set aside.

11. The respondent/plaintiff will take next steps in the matter i.e., call upon the trial court to issue summons for judgment as per the prescribed form i.e., Form No. 4A under Appendix B of the CPC.

12. The appellants/defendants will thereafter, as mandated, file their affidavit if they are so inclined to seek leave to defend.



13. Since the delay in the progression of the summary suit was caused by the appellants/defendants, they are directed to pay Rs.20,000/- as costs to the respondent/plaintiff.

13.1 Costs will be paid on or before the next date of hearing fixed before the trial court.

14. List the matter before the trial court on 06.06.2024.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 27, 2024

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