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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 08.02.2024

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RFA(COMM) 80/2022 and CM APPL. 45603/2022**BELA CREATION PVT LTD****..... APPELLANT**

Through: Mr V. S. Dubey, Advocate.

versus

JAI DURGA TRADERS PVT LTD**..... RESPONDENT**

Through: None.

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. On the previous date i.e., 10.01.2024 we had heard the matter at length.
2. The record shows that notice was issued in the appeal by the coordinate bench on 19.10.2022.
 - 2.1 On the said date, the coordinate bench stayed the impugned judgment dated 22.02.2022 whereby conditional leave to defend was granted, subject to the appellant depositing Rs.15 lakhs with the Registrar General of this court within six (06) weeks.
3. It is not disputed by the counsel for the appellant that the said sum has not been deposited by the appellant.
 - 3.1 It is in this context that nearly one year and three months later, an application was moved seeking permission to deposit the money.
 - 3.2 This application came up before the court on 10.01.2024 when, it was dismissed as withdrawn.
4. However, insofar as the appeal was concerned, the following was observed by the Court on 10.01.2024:



“3. This appeal is directed against the order dated 22.02.2022, which granted conditional leave to defend the suit action. It is not in dispute that in the meantime a final judgment and decree dated 24.05.2022 has been passed.

4. It is also not in dispute that the appeal preferred against the final judgment and decree, was dismissed as withdrawn by the coordinate bench.

5. According to us, in the given circumstances, nothing survives in the present appeal. Since Ms Aggarwal seeks accommodation on the ground that in the usual course the appeal is fixed for 07.02.2024, list the appeal on the said date.”

5. Having regard to the fact that pending the above-captioned appeal a final judgment was rendered by the trial court, against which an appeal was preferred which was withdrawn by the appellant, according to us, nothing survives in the instant appeal as was noted on 10.01.2024.

6. The only reason the appeal was kept back on 10.01.2024 was on the insistence of the learned senior counsel appearing for appellant on that date that only the application for extension of time to deposit the money (as ordered by the court on 19.10.2022) had been listed, and not the appeal.

6.1 Accordingly, the appeal, as requested, was stood over to the date already fixed i.e., today [07.02.2024].

7. We have heard the learned counsel for the appellant.

8. We find no good reasons to entertain the appeal. The appeal is accordingly dismissed.

9. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 8, 2024 / tr