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

% ***Date of decision: 14th August, 2024***

+ **CM(M) 1163/2022 & CM APPL. 46896/2022**

VIJAY LAKSHMI MENONPetitioner

Through: **Mr. Abhishek Gupta, Advocate.**

versus

BHARAT CHUGH AND ANRRespondents

Through: **Mr. Vikram Kumar with Ms. Anushka Kumar, Mr. Abhinav Kumar, Mr. Khursheed Ahmed, Advocates**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court, who had filed a suit for recovery under Order XXXVII CPC.
2. The appearance was put in by the defendants but it seems that since, the plaintiff was not very diligent, in taking out summons for judgment, the learned Trial Court penalized the plaintiff by converting the suit into an ordinary suit.
3. Such order dated 01.09.2022 is under challenge.
4. Even if the observations made by the learned Trial Court are believed to be true, the learned Trial Court could have either imposed certain cost upon the plaintiff for not taking any action or could have even dismissed the suit for non-prosecution, but it was not appropriate



for the learned Trial Court to have taken such an extreme step. The suit, which was summary in nature, should not have been converted into an ordinary suit because of the alleged inaction on the part of the plaintiff.

5. Learned counsel for the respondent states that he leaves it to the discretion of the Court to pass appropriate orders but at the same time, he states that for wasting the precious time of the learned Trial Court, the plaintiff should be burdened with some cost.

6. Keeping in mind the overall facts and circumstances of the case and to ensure that there is no further delay in the matter, present petition is disposed of with direction that the learned Trial Court would proceed further with the matter, assuming it to be a summary suit.

7. It is stated by learned counsel for the respondent that as an abundant caution, he has already filed an application seeking leave to defend which fact is not even disputed by the learned counsel for the petitioner. In such a situation, there is no requirement of taking out summons for judgment afresh. Defendant is also precluded from raising any objections in this regard.

8. Learned counsel for the plaintiff states that he has also filed a reply to the above application seeking leave to defend.

9. Let copy of reply affidavit, if not already supplied, be supplied to learned counsel for the defendant, who would also be at liberty to file rejoinder affidavit, if any.



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10. Both the parties are directed to appear before the learned Trial Court on the date fixed i.e. 24.08.2024. The learned Trial Court would, accordingly, after taking the rejoinder affidavit, if any, on record and after hearing arguments from both the sides, decide the application seeking leave to defend, in accordance with law.

11. Petitioner/plaintiff is also burdened with cost of Rs.10,000/- which would be paid to the opposite side on the next date fixed before the learned Trial Court.

12. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

AUGUST 14, 2024
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