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

% ***Date of decision: 12th August, 2024***

+ **CM(M) 3150/2024, CM APPL. 45926/2024 & CM APPL. 45927/2024**

RSG CONSUMER PRODUCTS AND ANRPetitioner

Through: **Ms. Anita Tripathi, Advocate**

versus

OM LOGISTICS LTDRespondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 45927/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3150/2024 & CM APPL. 45926/2024

1. Petitioner is defendant before the learned Trial Court.
2. Initially, when a suit, based on the same cause of action, had been filed by the same plaintiff against the same defendant i.e. CS (Comm.) 631/2019, the plaintiff made a statement before the learned Trial Court that it wanted to withdraw the suit on technical grounds. He also sought liberty to file the same afresh.
3. Defendant was also duly represented before the learned Trial Court on 27.07.2022 and it is noticed that even the counsel for the defendant had not raised any objection to the aforesaid request made by the plaintiff.
4. Resultantly, above suit was dismissed as withdrawn and liberty, as



prayed for, was granted.

5. Thereafter, a fresh suit was instituted by the same plaintiff on the same cause of action and when such suit was filed, the defendant moved an application under Order VII Rule 11 CPC. In such application, (Annexure P-6 herein), it simply claimed that the cause of action had arisen on 24.07.2019 whereas the suit had been filed on 15.12.2022 and, therefore, it was barred by limitation.

6. Learned Trial Court, taking note of the aforesaid liberty granted by it, dismissed such application.

7. The order dated 27.07.2022 is very specific and the permission was given to institute a suit afresh and more importantly, this request was not opposed by the opposite side. In such a situation, the defendant cannot raise any grievance that the other suit was not maintainable or that period could not have been excluded.

8. It is noticed that in the written statement, petitioner, who is defendant before the learned Trial Court, has not even raised the question of limitation.

9. Be that as it may, the defendant had earlier not raised any grievance and, therefore, it cannot be permitted to blow hot and cold and, therefore, in such a peculiar situation, I do not find any merit in the present petition.

10. Same is accordingly dismissed *in limine*.

(MANOJ JAIN)
JUDGE

AUGUST 12, 2024/dr