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

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Date of decision: 23.08.2024

+ **FAO (COMM) 167/2024 & CM APPL. 48645-48647/2024**

MLK FASHIONS THROUGH ITS

PROPRIETOR SHRI SHALABH KAPOOR

.....Appellant

Through: Mr Sanbha Rumnong with Ms Lija
Merin John, Advocates.

versus

LACE WORLD THROUGH ITS AR

SHRI ARVIND RAJPUROHIT

.....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)

CM APPL. 48645/2024

1. Allowed, subject to just exceptions.

FAO (COMM) 167/2024 & CM APPL. 48646/2024 *[Application filed on behalf of the appellant seeking condonation of delay of 86 days in filing the appeal]* and **CM APPL. 48647/2024** *[Application filed on behalf of the appellant seeking condonation of delay of 35 days in re-filing the appeal]*

2. This appeal is directed against the judgment and order dated 14.02.2024 passed by Mr Ajay Kumar Jain, learned District Judge, Comm-03, South-East, Saket Courts, Delhi.



3. Via the impugned judgment, the trial court has dismissed the application filed on behalf of the appellant/defendant for recalling the *ex parte* judgment dated 22.10.2022.

3.1 The impugned judgment records that the appellant/defendant had refused service of summons in the suit which led to *ex parte* judgment dated 22.10.2022 being passed.

4. Counsel for the appellant/defendant says across the Bar that there is nothing on record to show that summons was refused by the appellant/defendant.

4.1 We would have accepted this submission put forth by the counsel for the appellant/defendant had the appellant/defendant made an assertion to that effect in the application for recall/setting aside of the *ex parte* judgment dated 22.10.2022.

5. Furthermore, it is not in dispute that the application for recall was filed on 09.06.2023.

5.1 On being queried, counsel for the appellant/defendant says that the appellant/defendant became aware of the *ex parte* judgment dated 22.10.2022 in November 2022.

5.2 Counsel for the appellant/defendant has also stated that the complete record of the case was made available only in January 2023. However, no such assertion has been made in the application for recall.

6. Thus, even if we assume the statement [that summons were not served] made merely across the Bar is true, it still does not explain the huge delay in moving the application for recall.



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7. Accordingly, the appeal is dismissed as we find no good ground to interfere with the impugned judgment and order.
8. Pending applications shall also stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 23, 2024/tr

Signature Not Verified

Digitally Signed By: ATUL
JAIN

Signing Date: 12/09/2024
14:16:25

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