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

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Date of decision: January 09, 2024

+ CM(M) 19/2024

MAHESH SHARMA

..... Petitioner

Through: Mr.Sandeep Gaur, Mr.Manish Kumar
Singh and Mr.Vipul Chokar, Advocates.

versus

M/S CAPRI GLOBAL CAPITAL LIMITED& ORS..... Respondents

Through: Mr. Sameer, Adv. for R-1.

CORAM:**HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T (oral)**

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 151 of the Civil Procedure Code, 1908 (“CPC”) seeking to set aside the impugned order dated 24.11.2023 passed by the Learned District Judge (Commercial Court -01), Central District, Tis Hazari, Delhi (hereinafter referred to as “Trial Court”) in MISC DJ No. 156/2023 whereby the Learned Trial Court, subject to cost of Rs. 5,000, allowed the application filed by the respondent no.1 herein, who is the petitioner before the Learned Trial Court, under Section 151 CPC seeking restoration of the petition numbered OMP No. 127/2019 filed by the respondent no. 1 under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the “Act”).

2. The crux of the matter is that respondent no. 1 initiated arbitration proceedings against the respondent no. 2 to 4 and the petitioner herein. Subsequent thereto, an award dated 25.07.2019 was passed by the learned Sole



Arbitrator granting a claim of Rs. 25,07,069/- along with interest, to the respondent no. 4 from the respondent 1 to 3 therein, jointly and severally.

3. Consequently, respondent no. 1 filed an application under Section 34 of the Act against the petitioner, respondent no. 2 to 4 which came to be registered as the suit.

4. It can be gathered from the record that in the proceedings of the aforesaid suit, the notice was issued to the petitioner & respondents no. 2 to 4. However, only the petitioner herein appeared through his counsel and the other respondents failed to appear and were hence proceeded ex-parte.

5. On 28.02.2022, the petitioner herein submitted before the learned trial court, no reply is required to be filed on his behalf and rather he would proceed with addressing arguments directly and the matter was adjourned.

6. Upon examination/perusal of the order dated 02.12.2022, it becomes apparent that the proxy counsel for the respondent no. 4 therein appeared and sought additional time to file a reply. The learned trial court, in the interest of justice, granted a final opportunity to file a reply, imposing a cost of Rs. 5,000 to be paid to DLSA (Central), Tis Hazari Courts, Delhi. Notably, the respondent no. 1 did not appear and the matter was adjourned to 28.01.2023. On the said date of hearing, the learned trial court dismissed the petition in default and for non-prosecution. The respondent no. 1 yet again failed to appear in the matter despite repeated calls.

7. Unsettled by his suit being dismissed in default, respondent no. 1 filed an application under section 151 of CPC seeking restoration of the suit.

8. Thereafter, the petitioner filed a reply to the application under Section



151 of CPC on 07.06.2023 and the arguments were heard on 27.09.2023. It was vehemently contended by the petitioner herein that the appellant failed to give any sufficient reasons for non-appearance of respondent no.1 on the said date of hearings i.e. on 02.12.2022 and 28.01.2023.

9. After hearing the arguments, the learned trial court vide the impugned order dated 24.11.2023 allowed the restoration of the suit in the interest of justice.

10. Submissions heard, record perused.

11. It was submitted on behalf of the petitioner that the learned Trial Court erred in allowing the restoration of the suit as sufficient reasons were not put forth by the respondent no. 1 in his application for restoration of the suit. The learned Trial Court even observed the conduct of the respondent no.1 in the order but still allowed the application for restoration, in the interest of justice.

12. The learned counsel relied on the judgement of this court in King Point Enterprises Co. Ltd. vs. Ali Asgar and Ors. Civil Suit (Comm.) 1566/2016 wherein it is observed *"court's time/indulgence cannot be purchased by costs, which are awarded to the opposite party only when sufficient cause for non-appearance when the suit was called for hearing is found and which has not been found in the present case."*

13. The respondent submits that on 02.12.2022, the matter was adjourned on the request of counsel for respondent no. 4 to file reply but not due to non-appearance of the respondent no.1. The absence of the respondent no.1 on 28.01.2023 was neither deliberate nor intentional, however, even previous to that, on every date of hearing, the respondent no.1 had complied with all orders



passed by the learned Trial Court and never acted in reckless manner towards not complying with the past orders of learned Trial Court, therefore, it cannot be said that he was not interested in pursuing the main case.

14. Needless to say, the respondent no.1 should have been vigilant as a committed litigant to pursue the petition filed by him under Section 34, of the Act. From the bare reading of the impugned order, it would appear that the learned Trial Court has not indicated much satisfaction of the Court about the non-appearance of the respondent no.1 on both date of hearing which it observed has not been satisfactorily explained by respondent no.1. However, it noted the conduct of the respondent no.1 and then restored the petition in the interest of justice, subject to imposing the cost.

15. Many a times, a Court can exercise some degree of discretion as permitted by the law. Therefore, merely because the conduct of the respondent no.1 is impermissible, a litigant may not be non-suited and judicial discretion can be exercised in his favour, nonetheless, the same is subject to the condition that such a negligent litigant may not repeat his irresponsible conduct in future, which is rightly done so, vide the impugned order passed by the learned Trial Court.

16. In view of the above, there is no illegality found in the impugned order passed by the learned Trial Court.

17. Accordingly, the present petition is dismissed.

SHALINDER KAUR, J.

JANUARY 09, 2024/SDS