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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 221/2024 and CM APPL. 63706/2024**
(Stay)
M/S ELAINE BEVERAGES PRIVATE LIMITED

.....Appellant

Through: Mr. Piyush Kanti Roy, Sr. Adv.
with Ms. Pragati Sharma and
Ms. Mahak Rastogi, Adv.

versus

M/S V2 CORP & ORS.

.....Respondents

Through: Mr. Devansh Vashishtha, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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06.12.2024

1. This appeal is directed against the orders dated 16 July 2024 and 21 August 2024 passed by the learned Judge seisin of CS (COMM) 471/2023.
2. In terms of the order of 16 July 2024, the learned Judge has recorded as follows:-

“4. In view thereof, there is no written statement of the defendant no.1 on record. Also, since the statutory time period for filing the said written statement by the defendant no.1 has long lapsed, the right to file the written statement of the defendant no.1 is closed.

5. For the aforesaid reasons as also since learned counsel appearing for the defendant no.1 seeks one week for addressing arguments on the application under Order XXXIX rule 4 read with Section 151 CPC, on which notice has yet to be issued, adjournment as sought is granted, albeit, subject to deposit of cost of Rs.25,000/- to be paid to the Delhi High Court Staff Welfare Fund [A/c: 15530110074442; IFSC: UCBA0001553] within the aforesaid period of one week.”



3. The aforesaid observations appear notwithstanding the order passed by the Joint Registrar on 11 July 2024, who had condoned the delay and taken the written statement on record. This becomes evident from a reading of paragraph 2 of that order and which is extracted hereinbelow:-

“2. Ld. Counsel for the plaintiff had raised an objection on the previous date to the effect that affidavit of admission / denial of documents on behalf of defendant no. 1 is not in the correct format. Ld. Counsel for defendant no. 1, however, submits that the affidavit has been filed in the correct format and no objection has been raised by the Registry. The application is thus disposed off with the observation that if at the stage of admission / denial of documents, it is found that affidavit of admission / denial of documents of defendant no. 1 is not in the correct format as per the Commercial Courts Act, defendant no. 1 shall bear the necessary consequences. Further, the application is allowed subject to a cost of Rs.4000/-, to be paid to the plaintiff within three weeks failing which written statement shall be deemed to have been taken off the record. Delay is condoned. Written statement is taken on record. Replication be filed within the period permissible, as worked out from today.”

4. In our considered opinion, once that order of the Joint Registrar had attained finality and no Chamber Appeal in accordance with our Rules had been instituted, there was no occasion for the learned Judge to have doubted the validity of the filing or of the written statement being included on our record. We are further informed that the conditions which stood imposed by the Joint Registrar had also been duly complied with. In view of the aforesaid, we find ourselves unable to sustain the orders impugned before us.

5. We consequently allow the instant appeal. The orders dated 16 July 2024 and 21 August 2024 are set aside. The written statement as accepted by the Joint Registrar shall form part of the record. The suit proceedings to continue accordingly.



6. This order, however, shall have no bearing on any action referable to Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 which may have been instituted by the respondents herein. The same shall be opened to be examined independently.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 06, 2024
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