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

% ***Date of decision: 18th October, 2024***

+ **CM(M) 3636/2024 & CM APPL. 61160-61161/2024**

MYFOJO FOOMIL PVT LTDPetitioner

Through: **Mr. Rajiv Kumar Choudhary,**
Advocate.

versus

PUSHAAN NAYYAR SOLE PROP YSOSOCIAL MEDIA

.....Respondent

Through: **Mr. Vineet Chadha with Mr. Anmol**
Sethi, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant before learned Trial Court.
2. When the above said suit was taken up by learned Trial Court on 18.07.2024, it directed *issuance of summons* to defendant No.1 only, and the rest of the defendants were directed to be deleted from the array of parties.
3. When the matter was thereafter taken up by learned Trial Court on 28.08.2024, noticing that the defendant Company had refused to accept summons and also considering that even the registered cover had been received back with the report of refusal, the defendants were awaited that day and were, eventually, proceeded against *ex-parte*.
4. Such order is under challenge.
5. It is not elucidated by the petitioner herein as to why it did not move appropriate application before learned Trial Court seeking setting



aside of the *ex-parte* order.

6. Learned counsel for the respondent/plaintiff has also appeared on advance notice and has drawn attention of this Court to order dated 19.09.2024 which clearly records that the counsel for the defendant Company along with their Chartered Accountant had appeared before the learned Trial Court and only a vakalatnama was filed. However, learned counsel for the defendant had stated before the learned Trial Court that he would move appropriate application seeking setting aside of the *ex-parte* order. Learned Trial Court accordingly ordered that the same be filed with advance copy to the opposite side and the plaintiff was also directed to file reply to the above said proposed application with advance copy to the opposite side.

7. It seems that thereafter the defendant did not file any application seeking to set aside the *ex-parte* order, and informed the Court that they would rather challenge the *ex-parte* order as it had not been passed in consonance with the statutory provisions.

8. This is in the above backdrop that the *ex-parte* order is sought to be assailed.

9. Learned counsel for the petitioner submits that written statement could have been filed, despite there being an *ex-parte* order.

10. When asked, learned counsel for the respondent (plaintiff) has stated that he does not want to prolong his suit unnecessarily and though the contentions made by the petitioner herein are contrary to the record, in order to expedite his own case, he would have no objection if he is permitted to file written statement and even if the *ex-parte* order is directed to be set aside.



11. Learned counsel for the petitioner does admit that, ideally, the petitioner should have filed an application seeking to set aside the *ex-parte* order, more so, when it was undertaken before the Court, but he leaves it to this Court to pass appropriate order in view of overall facts of the case.

12. Accordingly, after hearing both the sides and with the consent of both the sides, the *ex-parte* order is set aside, subject to cost of Rs.10,000/-. Such cost be paid to plaintiff on 25.10.2024 when both the sides shall appear before the learned Trial Court. Defendant i.e. the petitioner herein is permitted to file written statement within one week from today i.e. on or before 25.10.2024. Advance copy thereof be also supplied to the plaintiff/learned counsel for the plaintiff.

13. It needs to be reiterated that the above said order has been passed with consent of both the sides and also in order to cut down further delay, which might have taken place in case the petitioner was permitted to move an application seeking to set aside the *ex-parte* order.

14. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 18, 2024
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