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

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Date of decision: 04.07.2024+ **FAO (COMM) 126/2024**

M/S NEUTRAL NVOCC PVT.LTD.Appellant
Through: Mr Gaurav K. Singh, Advocate.

versus

M/S CARGOCARE FREIGHT AND
FORWARDING PVT. LTD.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 No. 36871/2024**

1. Allowed, subject to just exceptions.

FAO (COMM) 126/2024, CM No. 36872/2024 *[Application filed on behalf of the appellant seeking condonation of delay of 9 days in filing the appeal]* **and CM No. 36873/2024** *[Application filed on behalf of the appellant seeking condonation of delay of 165 days in re-filing the appeal]*

2. This appeal is directed against the order dated 27.09.2023 passed by Ms Savita Rao, learned District Judge (Commercial-02), Dwarka Courts, New Delhi.

3. Via the impugned order the learned District Judge dismissed the appellant's/plaintiff's application preferred under Order IX Rule 9 read with



Section 151 of the Code of Civil Procedure, 1908 [in short, “CPC”]

4. To be noted, the record shows that on 19.07.2023, the learned District Judge dismissed the suit for non-prosecution. While doing so, the learned District Judge noted that summons were not issued for want of deficiency concerning stamps. The learned District Judge went on to say that the appellant/plaintiff had not fulfilled deficiency, and therefore, summons could not be issued.

5. Our attention has been drawn by the counsel for the appellant/plaintiff, *inter alia*, to the order dated 01.05.2023 passed by the trial Court, which is indicative of the fact that summons *via* ordinary process *qua* the respondent/defendant were issued which were not returned back. In this order it is also observed that summons *vis-à-vis* the respondent/defendant through registered cover could not be issued due to insufficient stamps. Accordingly, on the said date, the appellant/plaintiff was given an opportunity to furnish the deficit stamps for issuance of the summons through registered post.

6. Learned counsel for the appellant/plaintiff says that since the counsel-on-record in the trial Court was not present at the relevant time, he could not put forth before the learned District Judge that the stamp affixed for service of summons *via* registered post was sufficient.

7. In any event, the argument is that the application for restoration was moved within a reasonable time i.e., on and about 21.08.2023.

8. According to us, given the fact that the application under Order IX Rule 9 CPC was moved in close proximity to the date when the suit was dismissed for non-prosecution, the appellant/plaintiff can be given one more opportunity to remedy the situation if a deficiency with regard to stamps



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continues to obtain.

9. Accordingly, the impugned order dated 27.09.2023 is set aside as also the order dated 19.07.2023. The suit is restored to its original position.

9.1 The suit will be placed before the concerned Judge on 22.07.2024.

9.2 In case there is deficiency with regard to the affixation of stamps, a short accommodation will be given.

10. The appeal is disposed of in the aforesaid terms. Pending applications shall also stand closed.

11. The Registry will dispatch a copy of this order to the concerned Court.

12. The appellant/plaintiff, *via* its counsel, will appear before the concerned Court on 22.07.2024.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 4, 2024 / tr