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

+ **CM(M) 4003/2024**

S AND S FREIGHT SYSTEMS

.....Petitioner

Through: Mr. Rohit Labh and Ms. Anjali Labh,
Advocates.

versus

BB BREWMASTERS VENTURES PVT. LTD.Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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06.12.2024

CM APPL. 71531/2024 (exemption)

Allowed, subject to all just exceptions.

Application accordingly stands disposed of.

CM(M) 4003/2024

1. Petitioner has challenged the order dated 26.09.2024, passed by learned District Judge, Patiala House Courts in CS COMM No. 632/2023, whereby, the application filed by the defendant/respondent for setting aside ex-parte order dated 26.04.2024 was set aside.
2. Petitioner filed a Money Recovery Suit. Summons were duly served to the respondent through WhatsApp and e-mail. Since no one appeared for the defendant/respondent on the date fixed i.e. 26.04.2024, respondent was proceeded ex-parte by the trial court.
3. Respondent thereafter filed an application for setting aside ex-parte order, which was allowed vide order dated 26.09.2024.



4. Learned counsel for the petitioner has submitted that the objective of the respondent is to delay the trial of the case and with that view, he did not even file the written statement nor appeared on the date fixed. It is submitted that respondent's claim of hospitalization and treatment of the counsel is unsubstantiated, there being no medical record. It is thus argued that the application of the respondent has been allowed without any sufficient justification.

5. Perusal of the order dated 26.04.2024 reveals that respondent was served through e-mail on 10.01.2024. Since he did not appear, he was proceeded ex-parte on 26.04.2024.

6. Vide order dated 26.09.2024, trial court had decided two applications, one being for setting aside the ex-parte order dated 26.04.2024 and the other was filed by the respondent under Order 8 Rule 1 CPC seeking condonation of delay in filing the written statement.

7. Trial Court dismissed the application under Order 8 Rule 1 CPC, concluding that the written statement was filed beyond the period of 120 days. Consequently, the defence of the respondent was struck off. The order passed on application under Order 8 Rule 1 CPC is not the subject matter of challenge in the present petition.

8. While dealing with application under Order 9 Rule 7 CPC, trial court took note of the submissions of the respondent that its counsel had fallen ill on the date of hearing and subsequently had to undergo an urgent surgery on 29.04.2024 and post surgery, he was put on strict bed rest, due to which, he could not appear before the court on 26.04.2024. The trial court also took note of the fact that even if respondent is ex-parte, he still retains the right to participate in the proceedings at any stage, and therefore, considering the



submissions of the parties, trial court deemed it appropriate to set aside the ex-parte order dated 26.04.2024.

9. Having gone through the order of the trial court, this Court finds no compelling reasons for interfering in the order dated 26.09.2024.

10. There is no merit in the present petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

DECEMBER 6, 2024

RM