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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 45/2025 & CM APPL. 7921/2025 (STAY)**
JAI SHRI SHYAM AUTOMOBILES

.....Appellant

Through: Mr. Pardeep Gupta, Mr. Ashish
Pathak, Advs.

versus

GREAVES ELECTRIC MOBILITY PVT. LTD.

.....Respondent

Through: Mr. Mirza Aslam, Ms. Chandni,
Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER

% **10.02.2025**
CM APPL. 7922/2025 (EX.)

Allowed, subject to all just exceptions.

The application stands disposed of.

FAO (COMM) 45/2025 & CM APPL. 7921/2025 (STAY)

1. The instant appeal has been preferred against the judgment and order dated 04 January 2025 pursuant to which the Order IX Rule 13 of the Code of Civil Procedure, 1908 application of the appellant has come to be rejected.

2. We note that while examining the prayer for recall of the *ex parte* decree, the Trial Judge has observed as follows:-

“16.The sufficient cause, which has been pleaded by the applicant/defendant for his non-appearance despite receipt of court summons through email or 15.09.2023 is that he had not opened the email thinking it to be a spam / fraud email and he had opened the email only when the bailiff had reached the house of the applicant/defendant on 08.11.2023. The said plea of applicant/defendant deserves to be rejected as firstly, the



applicant/defendant has not placed on record any material in support of his plea that he had opened the email on 08.11.2023 and not on 15.09.2023.

17. Secondly, if this plea of the applicant/defendant is accepted, then every party will conveniently avoid his or her appearance in the court on the strength of the plea that the summons received electronically were never opened thinking it to be a spam / fraud email and the entire purpose of serving the summons expeditiously through electronic means will get defeated.

18. The other sufficient cause pleaded by the applicant/defendant that plaintiff/non-applicant had intentionally provided an incorrect address of the applicant/defendant in the suit due to which physical summons could not be served upon him, has not been established on record. The reason for the same is that in the suit, plaintiff/non-applicant had provided the correct address of the applicant/defendant, as in the affidavit annexed with the application filed under Order IX Rule 13 CPC, applicant/defendant has provided the same address.

19. Further, in the execution petition, bailiff had reached the same address of the defendant, as provided in the suit and thereafter, applicant/defendant had filed the present application for setting aside ex parte judgment and decree dated 09.01.2024. Therefore, the aforementioned facts show that plaintiff/ non-applicant had provided the correct address of the applicant/defendant and record also reflects that plaintiff/non-applicant had made an effort to get the applicant/defendant served at his address through normal process as well as through speed post, However, physical summons through speed post remained unserved due to report of the postman of incomplete address and even the process server had reported regarding the non-service of summons as address was not found traceable.”

3. In the absence of the appellant raising any dispute or question with respect to the factual conclusions which have come to be recorded, we find no error in the Trial Judge holding that the appellant had failed to furnish sufficient explanation for not attending to the suit proceedings upon service of summons. The explanation of the appellant that he thought that the e-mail was “spam” fails to inspire any confidence. We also bear in consideration that it is not the case of the appellant that he had deleted that e-mail assuming that it was



“spam”. That communication was retained and, according to the appellant, incredulously accessed only when the bailiff arrived. The explanation as tendered was not only implausible, it was also not proved.

4. We consequently find no error in the view as expressed by the District Judge.

5. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 10, 2025/neha