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

+ RFA 765/2019 and CM APPLs. 37956/2019, 37960/2019 and 37961/2019

GURDEEP SING VIRK

.....Appellant

Through: None.

versus

M/S FORTUNE INSOLES PVT LTD

.....Respondent

Through: Mr. Udit Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

11.02.2025

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1. This appeal was preferred on behalf of the Appellant under Section 96 of the Civil Procedure Code, 1908 challenging judgment dated 28.09.2018 passed in Civil Suit No. 15465/2016 by learned Additional District Judge-03, Central, Tis Hazari Courts, whereby the learned Trial Court passed a decree for a sum of Rs.3,16,268/- along with pendente lite and future interest at the rate of 12% per annum along with cost in favour of the Respondent herein. Parties are hereinafter referred to by their litigating status before this Court, for the ease of reference.

2. Be it noted that on 26.08.2019, notice was issued in the appeal to the Respondent subject to deposit of the decretal amount by way of FDR in the name of the Registrar General of this Court within a week from the date of the order. Thereafter an application being CM APPL. 42802/2019 was filed by the Appellant seeking some more time to deposit the decretal amount, which was allowed vide order dated 25.09.2019 and further period of 05



weeks was granted to deposit the decretal amount. On 11.12.2019, when the matter was listed before the Court, it was noticed that decretal amount was not deposited by the Appellant and Court made it clear that there is no stay of operation of the impugned judgment and decree and that no further indulgence was called for.

3. Order sheets indicate that the appeal was adjourned thereafter from time to time due to suspension of work on account of Pandemic COVID-19 and was listed on 29.04.2022 when there was no appearance on behalf of the parties and Court Notice was issued to the parties as also counsels returnable on 15.09.2022. On the adjourned date, Appellant sought adjournment as the arguing counsel was unavailable. Matter was adjourned to 01.03.2023 and thereafter to 22.09.2023 and finally to 09.09.2024.

4. At this stage, it is relevant to note order dated 09.09.2024. Court observed that there was nothing on record to show that Appellant had deposited the decretal amount in compliance of order dated 26.08.2019. Request of the counsel for the Appellant for extension of time to do so was declined and Respondent was granted liberty to execute the decree, in accordance with law and the matter was adjourned for today.

5. There is no appearance on behalf of the Appellant despite the matter having been called twice. Counsel for the Respondent submits that notice was issued by the Court on 26.08.2019 subject to deposit of decretal amount within one week. The amount was not deposited within the time granted by the Court. Despite the Court granting indulgence to deposit the decretal amount within a period of 05 weeks vide order dated 25.09.2019, till date there is no compliance by the Appellant and since the notice itself was subject to deposit of the decretal amount, the appeal deserves to be



dismissed. It is urged that the Appellant is not interested in prosecuting the appeal and the pendency of this appeal and the prolonged litigation from 2019 is causing harassment to the Respondent, who is a decree holder.

6. I have heard learned counsel for the Respondent and perused the order sheets.

7. There is merit in the contention of the Respondent that the notice in the appeal was issued on 26.08.2019 subject to deposit of the decretal amount within one week from the date of the order. The amount was admittedly not deposited. On an application filed by the Appellant for extension of time, further period of 05 weeks was granted to deposit the amount vide order dated 25.09.2019. The amount was not deposited and on 11.12.2019, the Court made it clear that no further indulgence was called for. On 09.09.2024, Court had granted liberty to the Respondent to execute the impugned judgment and decree and declined to grant further time to the Appellant to comply with the order dated 26.08.2019.

8. Appellant has chosen to remain unrepresented today. It is clear that notice was issued subject to deposit of decretal amount and in the absence of the deposit, this appeal deserves to be dismissed, as rightly flagged by counsel for the Respondent.

9. For all the aforesaid reasons, the appeal is dismissed along with pending applications, with no order as to costs.

JYOTI SINGH, J

FEBRUARY 11, 2025/shivam