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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 344/2025**
YOGESH TOMARAPPELLANT
Through: Mr Vipin K. Mishra, Advocate.
versus
RX INFOTECH PVT LTDRESPONDENT
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

% **30.05.2025**

CM APPL. 35832/2025

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL. 35831/2025

3. This is an application filed by the appellant/applicant seeking condonation of delay of 599 days in filing the present appeal. The applicant seeks to impugn an *ex-parte* final judgment and decree dated 18.07.2023 in CS(COMM) 206/2021 captioned ***RX Infotech Pvt. Ltd. v. Yogesh Tomar*** whereby the learned Commercial Court had decreed amount of ₹3,68,044/- along with interest @ 12% per annum from the date of filing of the suit till realization along with costs. It is the applicant's case that he was not aware of the institution of the suit and has not received the summons of the same. The applicant claims that he became aware of the impugned judgment and decree some time in August, 2023 through one of his agent/employees of the respondent. Thereafter, the applicant filed an application [Misc. DJ 1473/2023] under Order IX Rule 13 of the Code of Civil Procedure, 1908 which was dismissed on 02.05.2024. The applicant claims that the fact that



his application for setting aside the *ex-parte* decree had been dismissed was not communicated to him by his counsel, and therefore, he was not aware of the said order as well. He claims that he became aware of the said order after his account was attached.

4. The learned Commercial Court had examined the applicant's contention that he has not received the summons in the commercial suit and rejected the same. Summons of the suit had been sent to the applicant on more than one occasions. According to the applicant, the summons was sent on incorrect address. However, the learned Commercial Court found from the material placed on record that summons was sent at the correct address which was reflected in invoices issued by the applicant as well as reflected in his GST registration. The court also sent summons electronically *via* WhatsApp message and e-mail. However, there was no averments in the application regarding the said mode of service.

5. We also find that there is no credible explanation for the delay in filing the present appeal after the applicant's application under Order IX Rule 13 was rejected on 02.05.2024. The contention that the applicant was not aware of the same because he was not informed by the counsel, is unpersuasive.

6. The present application is accordingly dismissed.

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7. Consequently, the appeal is dismissed as well.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 30, 2025/tr

Click here to check corrigendum, if any