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

+ **FAO 35/2020**

PRADYUMAN OVERSEAS LTDAppellant
Through: Mr. Chaitanya Mehta, Ms.
Aakanksha Nehra, Mr.
Sandeep Bajaj and Ms. Shalaka
Garg, Advs.

versus

VIRGOZ OILD & FATS PTE LTD & ANRRespondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **19.03.2025**

CM APPL. 11662/2023

1. No one has cared to appear for the respondent Nos.1 and 2. As per the amended memo of parties, which is taken on record, respondent No.3 also appears to have been served.
2. The application stands disposed of.
3. However, no one is appearing for the respondents.

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4. Having heard the learned counsel for the appellant and on perusal of the record, this appeal filed under Section 104 read with Order XLIII Rule 1(c) of the Code of Civil Procedure, 1908 [“CPC”] comes up for final disposal.
5. The appellant is assailing the impugned order dated 19.09.2019 passed by the learned Additional District Judge-04, North-West, Rohini Courts, Delhi [“**trial Court**”], thereby dismissing its



application under Order IX Rule 9 of the CPC for restoration of the suit, which was dismissed in default for non-appearance of its Authorized Representative as well as counsel on 18.01.2017. It would be expedient to reproduce the impugned order passed by the learned trial Court, which reads as follows:

“19.09.2019

Present: Sh. J.K. Goel on behalf of the plaintiff.
Mrs. Aakriti Mittal, counsel for defendant no.1
Sh. Arpit counsel for defendant no.2

Matter is fixed today for arguments on application for restoration of suit filed by the plaintiff subject to cost of Rs. 2000/-. Cost is not paid. Neither the AR nor the counsel is present and above mentioned person appearing on behalf of the plaintiff claims to be one of the relative. He is unable to give any further details about presence of AR of plaintiff or counsel. Request is strongly opposed. Considering the above facts, the right of the plaintiff/applicant to argue on the present application stands closed.

I have heard Ld. Counsel for the defendants and carefully perused the record in the light of submissions made before me.

The plaintiff has filed the present application for restoration of suit which was dismissed in default on 18.01.2017. It is submitted that appearance could not be made on 27.07.2016, 19.10.2016 and 18.01.2017 as wrong date was noted by the clerk of the counsel.

Application has been strongly opposed by Ld. Counsels for the defendants.

As per report, vide order dated 13.01.2016 the present matter was transferred from Hon'ble High Court of Delhi to the Ld. District & Sessions Judge, North West, Rohini Courts, Delhi for 07.04.2016. Appearance was duly made by the counsel for plaintiff on 07.04.2016 but no one appeared on their behalf on 27.07.2016, 19.10.2016 and 18.01.2017 when the matter was ultimately dismissed. In the meantime, a cost of Rs. 6000/- was also imposed on the plaintiff vide order dated 27.07.2016 which was never paid. The only reason given in the application for non appearance on the above mentioned dates is that date was wrongly noted by the clerk of the counsel but this explanation does not explain in sufficient terms the non appearance of plaintiff on consecutive three dates spread over a period of around six months.

After filing of the present application also, the conduct on behalf of the plaintiff is not appreciable as several opportunities were availed for arguments and a cost of Rs. 2000/- was also imposed vide order dated 28.05.2019 which has not been paid. Neither the AR of plaintiff nor Ld. Counsel for plaintiff/applicant has been appearing since several dates. Last proper appearance on behalf of applicant was made on 07.03.2018. On 05.05.2018 and 30.10.2018 appearance was made on one proxy counsel and since last date of hearing one person



namely J.K. Goel is appearing who is not an authorized person.

Considering the overall facts and circumstances, it is clear that the plaintiff/applicant has not been pursuing the matter sincerely after its transfer from Hon'ble High Court of Delhi. The continuous non appearance and non payment of cost imposed by the court suggest that the application in hand is not a bonafide application. Hence, with these observations, the above mentioned application is dismissed.

File be consigned to Record Room after completing necessary formalities.”

6. A bare perusal of the aforesaid order would demonstrate the repeated acts of negligence on the part of the appellant/plaintiff in pursuing the suit for recovery against the defendants. It is also borne out from the record that no appearance was put on several dates and though accommodation was given to the appellant/plaintiff subject to payment of costs, even the costs were not paid. Therefore, this Court is not inclined to interfere with the impugned order dated 19.09.2019.

7. Resultantly, the present appeal is dismissed.

DHARMESH SHARMA, J.

MARCH 19, 2025/*Sadiq*