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

+ RFA 892/2023 & CM APPL. 57092/2023

LUV KUSH BEVERAGES PVT. LTD. & ANR.Appellants

Through: Mr. Tushar Parashar and Mr. Bhanu
Pratap Singh Phore, Advocates.

versus

RAJ KUMAR GUPTA

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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09.04.2026

1. Regular First Appeal under Section 96 CPC has been filed on behalf of the Appellants to challenge the Order dated 25.07.2023 passed by learned Addl. District Judge-04, North-West, Rohini, Delhi, who has decreed the Suit of the Plaintiff under Order XXXVII CPC for Rs.4,09,221/- along with interest @ 6% per annum on the balance amount of Rs.2,70,000/- (as interest is not permissible on the interest amount of Rs.1,39,221/-) by dismissing the Application for Appearance filed on behalf of the Defendants/Appellants, as it was delayed by 12 days.

2. The Plaintiff/Respondent had filed a Summary Suit under Order XXXVII CPC for Recovery of Rs.4,09,221/- along with interest on the basis of balance sheets of Defendant No.1 Company, Form 26A of some payments which had been made earlier, and the ledger accounts.

3. The basic averments were that the Defendant Company was engaged in the business of buying, selling, reselling, importing, exporting, transporting, storing, promoting, marketing, supplying, trading, dealing in



all types of food products including agricultural products and beverages on retail as well as wholesale basis in India or elsewhere. The Plaintiff had been providing its services, as retainer for the business. It was decided between the parties that the Plaintiff would give his services for which the Defendant would pay a fixed amount of Rs.7,00,000/- per annum as professional fees for the Financial Year 2019-20. However, only Rs.4,00,000/- had been paid for the services and the remaining Rs.2,70,000/- were still outstanding.

4. As per the Defendant/Appellant No.1 which is the Company and Appellant No.2/Defendant No.2 which is Director of Appellant/Defendant No.1, Summons of Appearance had been served on both the Defendants/Appellants on 28.04.2023. However, the Appearance could be filed only on 20.05.2023 i.e. with a delay of 12 days.

5. It was sought to be explained Appellant No.2 Director has been suffering from ill health, while the Company was embroiled in some disputes in regard to GST, on account of which the delay occurred.

However, the learned ADJ in the impugned Order dated 25.07.2023 did not consider this to be sufficient explanation for condoning the delay of 123 days and thereby, decreed the Suit of the Plaintiff/Respondent.

6. Aggrieved by the said Order, the present **First Regular Appeal** has been filed.

7. Learned counsel for the Appellant submitted that **firstly** it is a commercial dispute and the learned ADJ had no jurisdiction to try the Suit. **Secondly**, the Suit is based on balance sheets of Defendant No.1 Company and also Form 26A of some payments, which cannot be considered a valid basis for maintaining a Suit under Order XXXVII CPC. **Thirdly**, the



original documents are not even available with the Plaintiff/Respondent who had sought to move an Application to lead secondary evidence in this regard.

8. It is submitted that had the Appearance taken on record and an opportunity given to the Appellant, he would have been able to raise all these questions in his Leave to Defend Application. It is, therefore, submitted that the impugned Judgment be set aside and the matter be remanded back to the learned Trial Court.

9. **Learned Counsel for the Respondent** has submitted that the Memo of Appearance on behalf of the Defendant/Appellant had been rightly rejected by the learned ADJ as there was no cogent explanation for the delay of 12 days.

Submissions heard and record perused.

10. It has been rightly pointed out by the learned counsel for the Appellant that the dispute in the Plaint is commercial in nature and the jurisdictional aspect was **first** required to be decided by the learned ADJ, before proceeding further with the trial.

11. It is also rightly pointed out that there is serious issue of whether the Suit can in the first instance be held maintainable under Order XXXVII CPC, in on the basis of the balance sheets of Defendant No.1 Company, and also Form 26A.

12. Considering that a jurisdictional issue has arisen in the present matter, the impugned Judgment is hereby, set aside and is remanded back to the learned District Judge to first decide the jurisdictional aspect of the Suit being Commercial in nature and also to accept the appearance and to give an opportunity to the Appellant to raise the issues. **The impugned Judgment**



is hereby, set aside.

13. The parties are directed to appear before the learned Addl. District Judge-04, North-West, Rohini, Delhi on 29.04.2026.

14. The decretal amount deposited by the Appellant be returned to the Appellant.

15. The Appeal stands disposed of accordingly, along with the pending Application(s).

NEENA BANSAL KRISHNA, J

APRIL 9, 2026/VA