

23.11.2022

Present: Sh. Tarun Malhotra, Ld. Counsel for the plaintiff along-with SPA of plaintiff.
Sh. Saurabh Rastogi, Ld. Counsel for defendant.

Submissions heard on application under order 9 rule 9 CPC. No reply filed. Perusal of record reveals that main suit was dismissed in default on 01.10.2022 as none appeared on behalf of plaintiff despite repeated calls and awaiting the plaintiff upto 3.10 pm. On that day, Ld. Counsel for defendant was presented. It is submitted that previous counsel had noted down the wrong date of hearing and plaintiff was out of station for business. However, Ld. Counsel for plaintiff has not filed any dairy or file cover in support of their plea. It is stated that previous counsel has refused to share the copy of the same and brief note has been handed over to the fresh counsel.

Ld. Counsel for the defendant has strongly opposed the same on the ground that no documentary proof of the pleas has been filed.

As the suit is at the stage of pre issue, application is accordingly allowed subject to directed that plaintiff shall not be entitled to any interest on the suit amount from 01.10.2022 onwards till the next date of hearing. Plaintiff is burdened with cost of Rs. 5,000/- to be paid to the defendant subject to that present suit be restored to its original number and position. As far as compliance of Section 12-A is concerned as per judgment **M/s Patil Automation Private Limited and Ors. Versus Rakheja Engineers Private Limited 2022 Latest Caselaw 645 SC dated 17.08.2022** of Hon'ble Supreme Court.

Put up for arguments on the point of maintainability on 17.12.2022.

(SURINDER S. RATHI)
District Judge
Commercial Court-03
Shahdara District, KKD
Delhi/23.11.2022