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

+ **FAO 309/2018 & CM No. 25924/2018**

DINESH KUMAR

..... Appellant

Through: **Ms. Amita Gupta & Mr. Aayush
Gupta, Adv.**

versus

RAJESH DABAS & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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25.09.2019

The appellant was the first defendant in civil suit [CS (OS) 437/2014] instituted by the first respondent, the second respondent herein having been impleaded as second defendant. Concededly, the appellant had due notice of the said suit. Concededly again, the written statement which was tendered was beyond the period granted and thus not taken on record, this having led to the case being not even contested, the appellant also having suffered the proceedings *ex-parte*.

By judgment dated 01.05.2015, a learned single judge of this Court decreed the suit in favour of the first respondent for recovery of Rs. 30,00,000/- along with Rs. 36,000/- towards interest, total amounting to Rs. 30,36,000/- in favour of the first respondent (decree holder).

The appellant had later moved an application under Order IX Rule 13 CPC attributing certain misconduct to his counsel. The matter stood

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transferred to the district courts on account of change of pecuniary jurisdiction. The application under Order IX Rule 13 CPC was dismissed by order dated 21.11.2017 which order is under challenge by the present appeal. The execution proceedings, in the meanwhile, are pending before the court of additional district judge. The appellant presses for stay.

In the given facts and circumstances, there cannot be an unconditional stay. It is deemed appropriate that the appellant be directed to deposit the decretal amount with the executing court which amount, upon deposit, shall be kept in interest bearing fixed deposit receipt taken out from a nationalised bank for a period of six months with provision for auto-renewal, and retained by the executing court till further directions of this Court.

Subject to strict compliance with the above condition within four weeks hereof, there shall be a stay against execution of the said decree.

Meanwhile, steps will be taken for service of notice on the first respondent, returnable for 14th February, 2020.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

SEPTEMBER 25, 2019

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