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

+ **CM(M) 873/2023**

M/S DEBONO FLEXCOM (INDIA) LIMITED & ANR

..... Petitioner

Through: Mr. Nitin Mittal, Advocate

versus

DESH PAL SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

23.05.2023

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[The proceeding has been conducted through Hybrid mode]

CM APPL. 27537/2023

1. This is an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. However, the petitioner is directed to obtain and file the certified copies of the aforesaid documents within four weeks from today.
4. Application stands disposed of.

CM APPL. 27538/2023

5. Exemption allowed subject to all just exceptions.
6. The application stands disposed of.

CM APPL. 27539/2023

7. This is an application seeking exemption from filing Trial Court

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record.

8. The Trial Court record is not necessitated to be summoned at the moment. As and when the need would arise, the same would be summoned.

9. The application stands disposed of.

CM(M) 873/2023 & CM APPL. 27536/2023 (Stay)

10. The petitioner challenges the order dated 17.04.2023 passed in CS (COMM) No. 2385/2019 titled *Desh Pal Singh vs. De Bono Flexcom India Ltd & Ors*, whereby the application under Order IX Rule 7 CPC, 1908 filed on behalf of the petitioner/defendant, was dismissed.

11. Mr. Nitin Mittal, learned counsel appearing for the petitioner submits that all the correspondences, including the legal notice issued by the respondent/plaintiff, the reply thereto, the pre-litigation mediation, etc. had taken place prior to 11.06.2019.

12. Learned counsel submits that it is on 11.06.2019 that the petitioner had left their address and shifted elsewhere. Learned counsel submits that alongwith the application under Order IX Rule 7 CPC, the Master Company Data reflecting that the petitioners moved to Unit No.500, 5th Floor, ITL Twin Tower, Plot No.B-9, Netaji Subhash Place, Pitampura, Delhi, was not considered by the learned Trial Court while passing the impugned order.

13. Learned counsel submits that after the pre-litigation mediation failed, the suit was filed on 30.09.2019, the summons whereof were never served upon the petitioner in accordance with the provision of Order V of CPC, 1908. In spite of the fact that the petitioner was not served in accordance with ordinary provisions of Order V of CPC, 1908 the learned Trial Court had in haste, it appears, to have permitted the respondent to effect service by substituted mode under the provisions of Rule 20 of Order V of CPC, 1908.



Based thereon, the learned Trial Court passed the impugned order presuming that the petitioner despite service has not appeared before the learned Trial Court.

14. Learned counsel submits that the present litigation arises out of a commercial suit and the timelines prescribed therein are strict and therefore the impugned order not setting aside the *ex parte* proceeding would cause grave prejudice to the petitioner.

15. Issue notice. On petitioner taking steps within a week, notice be served upon respondent through all permissible modes. Additionally, through learned counsel appearing for the respondent before the learned Trial Court.

16. Reply be filed within four weeks from the date of service. Rejoinder thereto, if any, be filed within four weeks thereafter.

17. List on 21.11.2023.

18. In the meanwhile, learned Trial Court is requested to defer the proceedings fixed for 24.05.2023 to a date beyond the date fixed by this Court.

19. A copy of this order be given *dasti* under the signatures of Court Master.

TUSHAR RAO GEDELA, J

MAY 23, 2023

Handwritten signature