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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 03rd July, 2025**
+ CM(M) 1115/2025, CM APPL. 37896/2025 & CM APPL. 37897/2025
INDIA BIZ COMPetitioner
Through: Mr. J.K. Gupta, Advocate

versus

YOKOHOMA INDIA PVT. LTD.
.....Respondent
Through: Mr. Abhinay Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 37897/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 1115/2025, CM APPL. 37896/2025

1. Petitioner is defending a suit which is commercial in nature.
2. Earlier petitioner was proceeded against *ex parte* and there was judgment against the petitioner herein which was passed on 04.10.2023.
3. Petitioner moved an application under Order IX Rule 13 CPC seeking to set aside the aforesaid judgment and decree and learned Trial Court, *vide* order dated 10.01.2025, allowed such application while observing that there was a doubt on the effectiveness of service upon such defendant. However, simultaneously, petitioner was burdened with an onerous condition and was directed to deposit the entire decretal amount of Rs. 12,60,545/-.
4. Ideally, if the petitioner was of the view that the aforesaid condition was onerous and unwarranted, it should have challenged the aforesaid order, in accordance with law. The petitioner, instead, filed an application seeking review of the order and the learned Trial Court, *vide* impugned order dated



05.05.2025, reduced the aforesaid amount to half.

5. Such order is under challenge now.

6. The review would come into play only if there is error apparent on record. If any such party feels that the judgment or any such order is rather erroneous one, instead of filing a review, the initial order should have been challenged.

7. Be that as it may, since the learned Trial Court was of the view that the service of summons was not beyond doubt, imposition of such harsh condition was not warranted.

8. Learned counsel for petitioner, in all fairness, submits that without prejudice to its rights and contentions, petitioner is ready to deposit 10% decretal amount, as security.

9. Mr. Abhinay Gupta, learned counsel for respondent/plaintiff has also joined the proceedings through *video conferencing* and leaves it to the Court to pass appropriate order in the matter. He, however, submits that his option to challenge order dated 10.01.2025 may, however, be left open.

10. Keeping in mind the overall facts, this Court is of the considered opinion that there was no real requirement of burdening the petitioner herein such onerous condition, particularly when the suit amount is Rs. 12,60,545/-

11. Petition is, accordingly, disposed of with the direction to petitioner herein to deposit 10% of the suit amount in the form of FDR with the learned Trial Court within two weeks from today, as a security.

12. Petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 3, 2025/dr/js/sw/shs