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

% *Date of Decision: 06th May, 2025*

+ CM(M) 859/2025 & CM APPL. 27548-27549/2025

PETER A FERNANDES

.....Petitioner

Through: Mr. Neeraj Malhotra, Sr. Advocate
with Mr. Ashish Aggarwal, Mr.
Mr. Nimish Kumar, Mr. Shivangi
Shokeen, Mr. Narender Kumar,
Mr. Akshaya Kumar and Mr. Alok
Lakhanpal, Advocates.

versus

O P MANCHANDA & ANR.

.....Respondents

Through: Mr. Himanshu Bajaj with Mr. Raj
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit which is commercial in nature.
2. The case is already at the stage of final arguments.
3. After completion of evidence, the defendant/petitioner moved an application under Order VII Rule 10 CPC seeking return or, in alternate, under Order VII Rule 11 CPC seeking rejection of the plaint.
4. Indubitably, though any such application can be moved at any stage of the case, when the case is already at the stage of final arguments and all these aspects can be taken care of by any Trial Court while considering final arguments, actually speaking, there is no real requirement of moving any such application as it only multiplies the work of the Court, unnecessarily.
5. Be that as it may, after hearing arguments for some time, learned Senior



Counsel for the petitioner, on instructions, submits that he does not press the present petition. He, however, supplements that when the abovesaid application seeking return/rejection of the plaint had been moved, the defendant had made reference to various other contentions which perhaps, have escaped the attention of the learned Trial Court as there is no discussion with respect to such contentions made in para 4(a), 4(b) and 4(d) of the abovesaid application. His limited request is that the learned Trial Court may consider those, at the time of final arguments.

6. Learned counsel for the plaintiff/respondent submits that all these contentions have also been incorporated by the defendant in their written submissions and since these are part of the written submissions, the Court may go into the same, while deciding the suit finally.

7. Be that as it may, the present petition is disposed of as not pressed in view of the abovesaid. Since the suit is already at the stage of final arguments, if the abovesaid contentions i.e. para 4(a), 4(b) and 4(d) of the abovesaid application have not yet been considered, this Court expects that at the time of final arguments, the learned Trial Court would consider those while disposing of the suit.

8. Before parting, learned Senior Counsel for the petitioner/defendant submits that when the impugned order was passed by the learned Trial Court on 26.04.2025, it also directed the defendant to appear personally before the Court. He submits that no reason has been assigned, directing for such personal appearance. It is submitted that the case is already at the stage of final arguments and the presence of the defendant does not seem to be warranted, particularly, when he is duly represented by his counsel.

9. Since, it is not clear from the impugned order as to what was the reason



for insisting for personal appearance of the defendant, this Court clarifies that, though it is always upto the learned Trial Court to exercise any such power and to give any such direction, but before exercising the same, the Court may provide some reason as to why it is insisting upon the personal appearance of the party, particularly, when the case is already at the stage of final arguments. Needless to say, if reason is disclosed, it is expected that defendant shall abide by any such direction for appearance.

10. The petition stands disposed of in aforesaid terms.
11. All the pending applications also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 6, 2025
st/pb