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

% **Date of Decision: 07th May, 2025**

+ CM(M) 860/2025

M/S CHAMBAL FERTILISERS AND CHEMICALS LIMITED

.....Petitioner

Through: Mr. Ankit A. Shah and Mr. Tarun
Arora, Advocates.

versus

ARUN TIWARI PROPRIETOR OF M/S TIWARI TRADERS CO.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

**CM APPL. 27671/2025 & CM APPL. 27672/2025 & CM APPL.
27673/2025 (Exemption)**

Exemption allowed, subject to all just exceptions.

CM(M) 860/2025

1. The point involved in the present petition is very short and precise.
2. The petitioner herein filed a suit seeking recovery of Rs.89 lacs. Though, the suit was filed under Order XXXVII CPC but it was converted into a Regular suit.
3. The petitioner is aggrieved by the fact that his application seeking restoration of the suit has been dismissed, without appropriately appreciating the reasons.
4. This Court has gone through the impugned order and, undoubtedly, the learned Trial Court was pained to see that on one earlier occasion also i.e.



16.02.2023, suit was *dismissed in default* and was, eventually, directed to be restored, subject to cost.

5. Thereafter, the plaintiff moved an application seeking permission to effect substituted service and, though, such request was allowed by the Court and defendant was directed to take steps to effect publication but no such steps were taken and, therefore, the suit was again *dismissed in default* on 22.07.2024.

6. The application seeking restoration is in context of the abovesaid order dated 22.07.2024.

7. On that day, there was no appearance from the side of petitioner and the defendant was also unserved till then. Taking note of the previous facts and also in view of the reason that the plaintiff had not taken any action to effect service through publication and the period of five years had already elapsed after the institution of the suit, the suit was *dismissed in default* and also on account of *non-prosecution*.

8. However, the order dated 22.07.2024 would also indicate that same day, after the abovesaid order was passed, the learned counsel for plaintiff appeared before the learned Trial Court and submitted that since the Law Manager of the plaintiff company had changed, the steps could not be taken. The Court, however, did not appreciate such contention and, therefore, the plaintiff, eventually, moved an application seeking restoration of the suit.

9. This Court has seen the reasonings given by the learned Commercial Court-02, South-East District, New Delhi and, clearly, noticing the conduct of the plaintiff, it refused to restore the suit in question.

10. Learned counsel for petitioner/plaintiff undertakes that there will be no further delay or inaction on his part. He also submits that he has already given



2025:DHC:3454



the reasons on account of which, the steps could not be taken. He also re-emphasizes the fact that on same day i.e. 22.07.2024, he appeared before the Court, *albeit*, belatedly.

11. Keeping in mind the overall facts of the case, the fact that substantial amount is to be recovered by the plaintiff, and in the interest of justice, the present petition is allowed and, resultantly, the suit is directed to be restored to its original position and original number, subject to cost of Rs.25,000/- which shall be deposited within two weeks from today with the concerned District Legal Services Authority.

12. The suit in question stands resorted and the petitioner/plaintiff is directed to appear before the learned Commercial Court concerned/Successor Court on 22.05.2025.

13. The petition stands allowed in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 7, 2025/ss/js