

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

% Date of Decision: 24th April, 2008

+ C.R.P. 51/2008 & CM No.4187/2008

RENUKA ENTERPRISES & ANR Petitioner
! Through: Mr. S.K. Sharma, Advocate

Versus

\$ B.P.L.LTD. Respondent
^ Through: Mr. Pradeep Venugopal, Adv.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the reporters of local papers may be allowed to see the judgment?
2. Whether the judgment be referred to the reporter or not?
Yes
3. Whether the judgment should be reported in the digest? Yes

Veena Birbal, J. (ORAL)

By way of present petition, petitioner has challenged impugned order dated 11.3.2008 passed by learned ADJ, Delhi by which application of the petitioner/defendant (before trial court) under Order 9 Rule 7 of CPC praying for setting aside order dated 9.1.2008 by which petitioner/defendant was proceeded ex-parte and its evidence was closed has been dismissed.

Counsel for petitioner submits that petitioner/defendant has been diligent in pursuing the case before trial court. It is stated that on 9.1.2008 nobody could appear on behalf of

petitioner/defendant as DW-2 i.e. Sh. M.S. Anand, husband of petitioner/defendant, was seriously sick due to which he could not appear in the court. Petitioner/defendant being his wife was looking after him and she also could not appear in the court on that day. It is stated that immediately on coming to know that petitioner/defendant is proceeded ex-parte and its evidence is closed, an application under order 9 Rule 7 read with Section 151 CPC was filed for setting aside the same.

It is submitted that respondent/plaintiff (in the trial court) did not file any reply to the said application before learned ADJ. The application of the petitioner/defendant was rejected vide impugned order dated 11.3.2008 and the matter has been adjourned for final arguments. It is submitted that the non-appearance was bonafide due to the reasons mentioned above. It is further submitted that petitioner/defendant has already led the evidence of defendant as DW-1. The examination-in-chief of her husband i.e. DW-2 has already been filed and the said witness has to be cross examined by the respondent/plaintiff. It is stated that apart from him there is no other witness of petitioner/defendant. If the impugned order is not set aside it will have serious consequences as petitioner/defendant will be deprived of reasonable opportunity to defend its case.

The aforesaid petition is not opposed by the respondent/plaintiff. Learned counsel submits in order to get

the matter decided on merits he is not opposing the present petition.

In view of above submission made and in the interest of justice and for the effective adjudication of the matter the impugned order dated 11.3.2008 is set aside and in consequence thereof order dated 9.1.2008 is also set aside. The learned ADJ will give one opportunity as last opportunity to the petitioner/defendant to produce its witness Sh. M.S. Anand for cross-examination. It is stated that next date of hearing in the matter is 9th May, 2008. Petitioner/defendant to ensure that on the said date Sh. M.S. Anand (DW-2) will appear before the court for his cross-examination. If for some reasons, not attributable to petitioner/defendant, the cross-examination is not done or not concluded, the learned trial court shall give some other date as per its convenience.

Petition stands disposed of accordingly.

VEENA BIRBAL, J

APRIL 24, 2008

srb