

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

+ CM(M) 1105/2007 and CM 10958/2007

% Date of Decision: 23rd April, 2008

SIGMA FREUDENBERG NOK P. LTD. Petitioner
Through : Mr. Vivek Malik, Advocate.

Versus

\$ VINAY TANEJA & ANR. Respondent
^ Through : Mr. Parmod K. Sharma,
Advocate for respondent no. 1.
Mr. S.C. Rajpal, Advocate for respondent
no. 2.

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?

Veena Birbal, J. (ORAL)

1. By way of present petition, petitioner has challenged impugned order dated 04.04.2007 passed by Learned ADJ, Delhi by which evidence of petitioner was closed due to non-appearance of witness of petitioner.

2. Petitioner company has filed a Civil Suit against respondents seeking reliefs of specific performance, recovery and damages on account of breach of employment agreement,

undertaking and bond agreement. Respondent no. 1 is an employee of petitioner company who had joined employment of petitioner company on 15.09.2001. Respondent no. 2 is the surety who has executed surety bond dated 07.11.2004 in favour of the petitioner company for the payment of losses/damages suffered/incurred by the petitioner due to negligence by respondent no. 1 or for violation of any terms and conditions of agreement/undertaking given by respondent no. 1. It is stated that after the completion of pleadings, issues were framed on 17.02.2006. Issues no. 1 and 2 being preliminary issues, were decided on 18.10.2006 in favour of the petitioner. Thereafter, matter was adjourned for the evidence of petitioner/plaintiff. It is submitted that on 26.02.2007, examination-in-chief by way of affidavit of one witness was filed. The said witness could not appear on that day as he was suffering from fever and his medical certificate was also filed. Thereafter, the matter was adjourned to 04.04.2007 for concluding the evidence of petitioner. It is stated that on that day, witness could not appear and the Learned ADJ closed the evidence of the petitioner.

3. Counsel for petitioner has argued that Learned ADJ has arbitrarily closed the evidence of the petitioner without

affording reasonable opportunity to petitioner to lead its evidence. It is contended that impugned order is passed in haste and has serious consequences upon petitioner in as much as petitioner will not be in a position to prove its case on merits. It is contended that petitioner has to produce only one witness whose affidavit has already been filed and if impugned order is set aside, it will not cause any prejudice to respondent as respondents will have opportunity to lead their evidence.

4. Learned counsel for respondent has argued that the Learned Trial Court has given ample opportunities to petitioner to lead evidence. There is no illegality in the impugned order which calls for interference by this Court.

5. I have heard counsel for parties and perused the record.

6. As noted above, there is only one witness of petitioner/plaintiff whose examination-in-chief by way of affidavit has already been filed before the Learned Trial Court. The said affidavit was filed on 26.02.2007 and on the next date, i.e. on 04.04.2007 due to non-appearance of the witness, evidence of petitioner/plaintiff is closed. The impugned order has serious consequences upon the petitioner/plaintiff as the

same is depriving the petitioner of having a fair opportunity to prove its case. In the interest of justice and for effective adjudication of the matter on merits, the impugned order is set aside and one more opportunity is given to petitioner/plaintiff to produce its witness whose affidavit has already been filed, subject to payment of cost of Rs. 2,000/- to respondent. Petitioner/plaintiff to ensure that the witness whose affidavit has already been filed shall remain present on the date which shall be fixed by the learned Trial Court for the evidence of petitioner/plaintiff. If cross-examination is not concluded on the said date or witness cannot be examined for some reasons, not attributable to petitioner/plaintiff, the trial court would be at liberty to fix it for any other date as per its convenience.

7. The petition stands disposed of accordingly. Copy of this order be sent to Learned Trial Court.

VEENA BIRBAL,J

APRIL 23, 2008
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