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

+ CM(M) 1258/2017

PIYUSH CHANDRA

..... Petitioner

Through: Mr. Ravi Panwar, proxy counsel for
Mr. Deepak Thukral, Advocate

versus

HARSH CHANDRA & ORS

..... Respondents

Through: Mr. Harsh Prakash, Adv. for R3 & R4
Mr. Sunil Dalal, Mr. Chandan Chawla, Advs. for R9

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.11.2017**

CM No.40073/2017 (exemption)

1. Allowed subject to just exceptions.
2. Application is disposed of.

CM No.40074/2017 (for condonation of delay of 18 days in re-filing)

3. For the reasons stated in the application, delay in re-filing the petition is condoned.
4. The application is disposed of.

CM(M) 1258/2017 & CM No.40072/2017 (for stay)

5. This petition under Article 227 of the Constitution of India impugns the order [dated 24th July, 2017 in Civil Suit No.19/2017 of the court of Additional District Judge (ADJ-1), Saket Courts, New Delhi) closing the evidence of the petitioner/plaintiff.

6. Though the counsel for the petitioner/plaintiff has not filed before this Court the copy of the order framing the issues in the Suit, but on enquiry states that issues were framed on 2nd February, 2015 and the Suit was posted for evidence of the petitioner/plaintiff on 23rd March, 2015. By 23rd March, 2015, the petitioner/plaintiff, however, had neither filed list of witnesses nor any affidavit by way of examination-in-chief and no witness of the petitioner/plaintiff was also present for recording of evidence; adjournment was sought and one more opportunity was granted to the petitioner/plaintiff to file affidavits of all private witnesses within eight weeks and the Suit posted for recording of evidence on 2nd September, 2015. By 2nd September, 2015 also, the petitioner/plaintiff had not filed a single affidavit by way of examination-in-chief and again adjournment was sought and last opportunity was granted subject to payment of costs and it was made clear that no further opportunity shall be granted and the Suit posted for evidence of the petitioner/plaintiff to 25th February, 2016.

7. On 25th February, 2016, the Suit, which till then was pending before this Court, on enhancement of minimum pecuniary jurisdiction of this Court, was transferred to the subordinate court. Before the subordinate court, some dates were taken for appearance of the parties and ultimately all parties appeared on 15th March, 2017. Finding that the petitioner/plaintiff had till then not filed any list of witnesses or affidavits by way of examination-in-chief, making it clear that no further opportunity will be granted and subject to further costs, the Suit was posted to 24th July, 2017.

8. On 24th July, 2017, only affidavit by way of examination-in-chief of one witness was presented and which witness of the petitioner/plaintiff was examined and finding that no other affidavit by way of examination-in-chief had been filed and no witness had been summoned and the Suit was already nine years old, the evidence of the petitioner/plaintiff was closed and the Suit posted for evidence of the respondents/defendants on 18th August, 2017.

9. This petition has come up before this Court today for the first time, i.e. after nearly four months of the impugned order and is accompanied with an application for condonation of delay in re-filing thereof. The counsel for the petitioner/plaintiff, on enquiry, whether the respondents/defendants have also concluded their evidence, states that the Suit is still pending for the said purpose but is not aware of the cause of adjournments for the said purpose.

10. As would be clear from the aforesaid, the petitioner/plaintiff has been granted sufficient opportunity and has been sufficiently cautioned at least three times and twice by imposition of costs. Notwithstanding the same, the petitioner/plaintiff appears to hold the view that once a Suit has been filed, the petitioner/plaintiff can take his own sweet time to pursue it at the pace which he desires.

11. The counsel for the petitioner/plaintiff first argued that a very important attesting witness is to be examined.

12. However, a perusal of the issues framed in the Suit as set out in the memorandum of petition does not show any issue requiring examination of attesting witness.

13. The counsel for the petitioner/plaintiff then states that though the petitioner/plaintiff has filed a Suit on the basis of a Will but the Will is not disputed.

14. If it is so, there is no explanation for the need to examine attesting witness. The same shows the casual manner in which the petitioner/plaintiff is even now approaching the proceedings in the Suit. Not only is the petitioner/plaintiff not entitled to any further opportunity, but the conduct of the petitioner/plaintiff even after his evidence being closed not showing any urgency to have this petition listed and repeatedly filing it with defects, disentitles the petitioner/plaintiff from any relief.

15. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 08, 2017
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