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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1239/2017 & CM No. 39294/2017 (for stay)
TAYAJE & SONS PVT LTD Petitioner
Through: Mr.O.P.Aggarwal. Advocate
Versus
CHETAN CABLETRONICS PVT LTD Respondent
Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.11.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd August, 2017 in CS No. 373/2016 of the court of District Judge, Shahdara District, Delhi] closing the right of the petitioner / plaintiff to lead evidence.
2. The suit, from which this petition arises, was filed by the petitioner / plaintiff for recovery of Rs.10,04,125/-. Vide judgment dated 26th July, 2016 under Order 12 Rule 6 in the suit, a decree for Rs.2,25,130/- was passed in favour of the petitioner/plaintiff and against the respondent/defendant. Issues were framed in the suit on 10th January, 2017 and the petitioner/plaintiff directed to file affidavits by way of examination-in-chief of all of its witnesses within ten days with an advance copy to the respondent/defendant and the suit posted for evidence of the petitioner/plaintiff on 28th March, 2017.
3. On 28th March, 2017 it was found that no affidavits by way of examination-in-chief had been filed by the petitioner/plaintiff and no witness of the petitioner/plaintiff was also present. The suit was adjourned “for P.E

finally by 04.07.2017”. On 4.7.2017 also neither any affidavits by way of examination-in-chief had been filed nor had any witness of the petitioner/plaintiff appeared. Though final opportunity had been given for ‘P.E.’ but on request of the counsel for the petitioner / plaintiff, yet another opportunity was granted to the petitioner/plaintiff for leading evidence, subject to deposit of costs of Rs. 1,000/- and by again giving a final opportunity for 22nd August, 2017.

4. It was in the aforesaid scenario that on 22nd August, 2017 when affidavit by way of examination-in-chief of one of the witnesses of the petitioner/plaintiff was tendered but since the said witness was absent, the evidence of the petitioner/plaintiff was closed. However, before doing so, since it was the plea of the petitioner/plaintiff that the witness whose affidavit had been tendered was undergoing treatment for sciatica, an opportunity was given to the petitioner/plaintiff to have the said witness examined on commission. However, the petitioner/plaintiff did not agree to the same and hence evidence was closed.

5. Counsel for the petitioner/plaintiff has argued that the said witness was unwell on 22nd August, 2017 and the petitioner/plaintiff did not agree to recording of evidence on commission since the petitioner/plaintiff is very poor.

6. Though the counsel for the petitioner/plaintiff states that a medical certificate of the witness was placed before the trial court but no such medical certificate has been filed before this Court and copy of the same is not available with the counsel for the petitioner/plaintiff even today.

7. The severity of the ailment from which the witness was stated to be affected is not known. Moreover, the absence of the witness on 22nd August, 2017 has to be viewed in the context of the earlier conduct of the petitioner/plaintiff. The petitioner/plaintiff had already availed of two earlier opportunities for leading evidence and on which dates adjournments were sought without stating any reason. There is no explanation as to why no witness other than the witness whose affidavit was tendered could have been examined. Even if the witness whose affidavit by way of examination-in-chief was tendered was unwell, the petitioner/plaintiff, as per averments in the plaint, is a Private Limited Company and has other Directors also besides the said witness. Counsel for the petitioner/plaintiff states that besides the witness who was to be examined, there is only one other Director besides employees. The petitioner/plaintiff, as per averments in the plaint, is doing business of lakhs and rupees and it is unbelievable that for leading evidence in a suit for recovery of amounts claimed to be due towards price of goods sold, supplied and delivered, any other Director or any other employee/officer of the petitioner/plaintiff could not have been examined.

8. The cherished dream, of expediting disposal of civil suits, the delay in disposal whereof is afflicting administration of justice, can never be achieved if the courts themselves continue to not respect the dates of hearing given by them and continue granting adjournment after adjournment. The aforesaid practice continues to convey an impression to the litigants and the Bar, of the dates of hearing fixed being not required to be respected. Unless it is made clear by the Courts that adjournments shall not be granted as a

matter of routine, such adjournments delaying the disposal of civil suits would continue to be sought.

9. Time has come for a change in conduct of court proceedings and which change would inculcate more faith in the judicial system.

10. No ground for interference in the discretion exercised by the learned District Judge is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 01, 2017

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