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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 64/2016

DEVELOPMENT CREDIT BANK LTD

..... Petitioner

Through Mr.Sumit Bansal and Mr.Amol Sharma,
Advocates.

versus

CPL TRADING CO PVT LTD & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.01.2016

C.M. No.2273/2016 (exemption) & C.M.No.2274/2016 (exemption)

Exemption is allowed subject to just exceptions. Applications disposed of.

CM(M) 64/2016& C.M. No.2272/2016

Petitioner is aggrieved by the order dated 12.01.2016 vide which the application filed by him seeking a recall of the earlier orders i.e. the order dated 19.8.2015 and 14.9.2015 had been dismissed.

Record shows that the present suit is a suit for recovery. Petitioner before this Court is the defendant in the Trial Court. On 19.8.2015 PW-1 had been examined and discharged. Cross-examination of PW-1 qua the defendant had not been effect. The Court had recorded that the proxy counsel had appeared for the defendant and since the counsel for the defendant was not available right to cross-examine the PW-1 stood

closed. Admittedly, this was the first opportunity when PW-1 had to be cross-examined by the defendant. Record shows that on earlier two occasions, the plaintiff had been granted opportunity to lead his evidence which was subject to payment of costs.

The petitioner is aggrieved by the treatment meted out to him. Vehement submission being that his counsel was not available because of urgent reason and the Court should have considered his request for an adjournment and given a date for cross-examination of the witness of the plaintiff but on that date the plaintiff evidence was stood closed and the matter was renotified by for 14.9.2015 for leading evidence by the defendant in defence. Order dated 14.9.2015 shows that the matter had been relisted for evidence of the defendant. Presence of neither the plaintiff nor the defendant had been marked. The defendant evidence stood closed. Counsel for the petitioner submits that this order was passed in the morning and before noon of the same day. The application seeking recall of these two orders (i.e. the order dated 19.8.2015 and subsequent order dated 14.9.2015) was filed on the same day i.e. 14.9.2015 which was finally decided by the impugned order dated 12.01.2016.

This Court notes that a valuable right would be lost to the petitioner/defendant in case he is not permitted to cross-examine the plaintiff or to lead his evidence in defence. This Court notes the factual narration as pointed out by the learned counsel for the petitioner is correct and it was only on the first date when the plaintiff evidence stood closed; this was the first opportunity which had been granted to the defendant to cross-examine the witness of the plaintiff. Submission of

the learned counsel for the petitioner that the evidence of the defendant stood closed prior to noon is also borne out from the fact that on the same date i.e. 14.9.2015 itself an application seeking recall of the orders dated 19.8.2015 and 14.9.2015 had been filed.

This Court has been informed that the matter is fixed for final arguments tomorrow.

The impugned orders dated 19.8.2015, 14.9.2015 and the subsequent order dated 12.01.2016 are set aside.

Petitioner/defendant is granted permission to cross-examine the plaintiff (only one witness) and also to lead his evidence in defence which would also be only one witness on behalf of the defendant. The Trial Court shall fix dates as per its diary.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

JANUARY 21, 2016

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