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

+ **CS(OS) 1214/2008 and CC 203/2008 and I.A. Nos. 7479/2008 & 23073-23074/2015**

RATHI SPECIAL STEELS LTD Plaintiff

Through: Mr. Shiv Khorana, Advocate.

versus

TRI-SQUARE SWITCHGEAR PVT. LTD Defendant

Through: Mr. Pankaj Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

21.01.2016

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O.A. No.432/2015

1. This chamber appeal has been preferred in respect of the order dated 29.09.2015 passed by the learned Joint Registrar, whereby the defendant's application being I.A. No. 13623/2015 under Order XVII Rule 2 and Order IX Rule 7 CPC read with Section 151 CPC, has been dismissed.

2. The plaintiff had produced Sh.S.K. Kapoor as PW-1. He was not cross-examined by the defendant on 06.12.2013 and again on 22.05.2014. The matter was adjourned to 29.10.2014, when again he was not cross-examined. The matter was adjourned to 26.02.2015 for cross-examination of PW-1, subject to costs of Rs.10,000/-.

3. On 26.02.2015, once again, none appeared for the defendant to cross-examine PW-1. Consequently, the right of the plaintiff to cross-examine PW-1 was closed and he was discharged. The matter was adjourned to 08.07.2015 for leading of further evidence by the plaintiff. However, on 08.07.2015, the witnesses summoned by the plaintiff did not appear when the matter was taken up as they were waiting in another Court. Consequently, the matter was adjourned to 24.09.2015.

4. On 10.07.2015, the defendant's aforesaid application came up before the learned Joint Registrar, who directed issuance of notice. Eventually, the said application has been rejected by the order dated 29.09.2015.

5. Though, it is seen from the record that the defendant has been highly negligent in the matter, and strictly speaking, on merits, may not be entitled to grant of another opportunity, in the interest of justice and subject to payment of costs of Rs.30,000/- over and above the costs of Rs.10,000/- imposed by the learned Joint Registrar, the defendant is granted one last opportunity to cross-examine PW-1. The costs be paid within two weeks.

6. Mr. Khorana submits that PW-1 has apparently left the services of plaintiff and may not be available for cross-examination.

7. In that situation, it shall be open to the plaintiff to substitute the said witness with another witness. If PW-1 is not available, let the plaintiff file the affidavit by way of evidence towards examination-in-chief of another witness within eight weeks with advance copy to learned counsel for the defendant. The concerned Court shall fix the date when the cross-examination of PW-1, or the substituted witness shall take place and no

adjournment shall be granted to the defendant for the said purpose under any circumstance. In case the defendant does not cross-examine the existing PW-1, or the substituted witness, the right of the defendant to cross-examine the said witness shall again be closed.

8. In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (Central), Tis Hazari Courts for further proceedings before the competent court on 19.04.2016.

9. It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

JANUARY 21, 2016
B.S. Rohella

VIPIN SANGHI, J