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

+ CM(M) 1132/2016 & CM Nos.41921-41922/2016

M/S THOMSON PRESS (INDIA) LTD Petitioner
Through Mr.Purushotam Singh, Advocate

versus

M/S KHEMKA CONTAINERS LTD Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.11.2016**

CM No.41922/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 1132/2016 & CM Nos.41921/2016 (stay)

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 6.6.2016 by which an application under Order 18 Rule 17 CPC filed by the petitioner was dismissed.
2. The petitioner has filed the suit for recovery of Rs.19,81,927/- against the respondent. DW-1 was cross-examined at length on 12.5.2016 and was thereafter discharged.
3. The petitioner thereafter moved the present application under Order 18 Rule 17 CPC for recalling of the witness i.e. DW-1. The only ground given in the application was that the previous counsel could not properly cross-examine the said witness and had not put relevant questions to the said witness. Hence, the petitioner has now engaged the present counsel who has

inspected the file and it has become necessary to re-examine the said witness.

4. The trial court by the impugned order noted that Order 18 Rule 17 CPC is a power which can be exercised sparingly and subject to the satisfaction that a witness is required to be recalled in the facts and circumstances of a particular case, for arriving at a just decision. It also noted that the application filed by the petitioner for recall of the DW-1 is completely silent as to what are the issues/questions left to be put which ought to have been put to the witness specially keeping in view the fact that the witness has been cross-examined at length and his evidence has been recorded in seven pages. The trial court also noted that the case pertains to the year 2002. The application was hence dismissed.

5. Learned counsel appearing for the petitioner submits that in the cross-examination of DW-1 on 12.5.2016 the court has itself observed that the counsel for the petitioner is not properly asking the questions to the witness. He has pointed out that now alongwith the present petition the proposed questions which were omitted to be asked from the witness have been reproduced.

6. In my opinion, there is no merit in the present petition. A perusal of the application filed by the petitioner for recall of DW-1 shows that it is bereft of any details or reasons as to why the witness has to be recalled except claiming that the old counsel did not put relevant questions. An attempt is now made to overcome the said omission by framing questions proposed to be asked to the witness in the present petition filed in exercise of powers of this court under Article 227 of the Constitution of India,

7. The powers of this court under Article 227 of the Constitution are

limited. In *Surya Dev Rai vs. Ram Chander Rai & Ors* (2003) 6 SCC 675, the Supreme Court concluded as follows:-

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

.....

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the

error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

8. In the facts and circumstances of this case, I am unable to hold that the trial court has acted in disregard of law, the rules and procedures or that the jurisdiction has been exercised which caused failure of justice or grave injustice was occasioned.

9. There are no reasons to interfere in the impugned order. Present petition is dismissed. All pending applications also stand disposed of accordingly.

JAYANT NATH, J

NOVEMBER 11, 2016

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