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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1093/2016 & CM Nos.40045-40046/2016
THE ORIENTAL INSURANCE COMPANY LTD..... Petitioner
Through Mr.Vishnu Mehra,Advocate
versus
M/S K S EXIM LTD & ANR Respondent
Through Mr.Rakesh Mittal, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **27.10.2016**
CM No.40046/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1093/2016 & CM No.40045/2016

1. By the present petition the petitioner seeks to impugn the order dated 16.8.2016 by which order the defendant's evidence was closed. The trial court noted that no witness is present for the defendant/petitioner and that the matter has been lingering on for defendant's evidence since 25.5.2015. An affidavit of one witness was filed but thereafter an application for substitution of its AR/witness was filed and was pending disposal. The trial court noted that pendency of substitution application was no bar from producing defendant's evidence. Hence, the trial court closed the right of the defendant to lead evidence.

2. Learned counsel for the petitioner has pointed out that the matter was fixed on 23.3.2016 when it was noted by the trial court that the matter is at the stage of disposal of the application for substitution of the

defendant's/petitioner's witness. The matter was adjourned to 1.6.2016. On the said date i.e. 1.6.2016 the matter was simply adjourned to 16.8.2016 i.e. the date on which the impugned order has been passed. Hence, the date 16.8.2016 was not fixed for the defendant's/petitioner's evidence but was fixed for disposal of the application for substitution of the witnesses by the petitioner. Learned counsel for the petitioner further submits that he has only one witness to examine.

3. Learned counsel for the respondents has opposed the petition. He has pointed out that the affidavit by way of evidence was filed by the petitioners in the year 2006. The concerned officer whose affidavit has been filed retired in 2012. Now, after a delay of further three years the petitioners have moved the present application for substitution. He further submits that since 2004 the defendant has taken a large number of adjournments.

4. A perusal of the orders of the previous dates, namely, 23.3.2016 and 1.6.2016 show that the matter was not fixed for evidence of the petitioner on 16.8.2016. The petitioner has to examine only one witness. Unless the application of the petitioner for substitution of his AR/witness was disposed of he could not lead the evidence. Hence, the petitioner cannot be blamed in entirety. It would be in the interest of justice that one final opportunity is granted to the petitioner to complete his evidence.

5. Subject to payment of costs of Rs.25,000/-payable to the respondents the petitioner shall ensure completion of evidence on the dates fixed by the trial court. No adjournment shall be granted to the petitioner for the said purpose. The trial court is also requested to ensure that for subsequent hearings also no adjournments are granted to the parties.

6. In case the affidavit of the new witness proposed to be examined by

the petitioner has not been filed, needful be filed before the next date of hearing before the trial court i.e. 22.11.2016.

7. Petition and all pending applications are disposed off as above.

JAYANT NATH, J

OCTOBER 27, 2016

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