

\$~A-9

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

+ CM(M) 1182/2016

ROY & COMPANY & ORS

..... Petitioner

Through Mr. P.K.Seth, Advocate.

versus

GLORY PROPERTIES (P) LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

06.12.2016

CM No. 42934/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1182/2016 and CM No. 42933/2016 (stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 17.10.2016 by which the right of the petitioner/tenant before the trial court to lead evidence was closed.

2. A perusal of the impugned order shows that the trial court noted that the matter was listed for RE as a last and final opportunity. On the last date it was clearly stated that no adjournment would be granted to either party on any ground whatsoever. The case is pending since 2004 and is one of the oldest matters pending in the court. Noting this, the trial court closed the right of the petitioner to lead evidence.

3. Learned counsel appearing for the petitioner submits that on the said date i.e. 17.10.2016, the petitioner along with the counsel had appeared before the trial court on the first call. As none had appeared for respondent No. 2, the matter was passed over. Even on the second call at 11.30 AM,

none had appeared for respondent No. 2 and the matter was passed over again. At that stage, learned counsel for the petitioner submits that he had to leave to attend a matter pending before NCDRC. A junior advocate was requested to remain present in the trial court to attend the matter in his absence and to seek a pass over. However when the matter was called at 12.45 PM, the junior counsel perhaps was unable to explain the situation inasmuch as an adjournment was sought by the petitioner instead of a pass over. In these circumstances, he submits that the impugned order has been passed.

4. Learned counsel for the petitioner submits that no original documents have to be brought on record as appears to have been recorded by the trial court.

5. An advance copy of the petition has been sent to the respondent but none is present for the respondent.

6. It may be noted that as per the order sheets RW-1 who was to be cross-examined was present in court. His affidavit by way of evidence was also already on record. Keeping in view the explanation offered by the learned counsel for the petitioner, it would be in interest of justice that a last opportunity is granted to the petitioner to complete his evidence. The trial court may fix an appropriate date for cross-examination of RW-1 on which date no adjournment would be granted to the petitioner.

7. In view of the above, the present petition stands disposed of.

8. All pending applications also stand disposed of.

JAYANT NATH, J.

DECEMBER 06, 2016/rb