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

+ CM(M) 1006/2015 and CM No. 24210/2015 (stay)

ORIENTAL BANK OF COMMERCE Petitioner
Through Mr. Roshan Kumar, Advocate.

versus

M/S MAYUR INTERNATIONAL & ORS Respondents
Through Mr. Kuljeet Rawal, Advocate for R-4
& 7.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
13.07.2016

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1. Learned counsel for the petitioner submits that they have by speed post served respondents No. 1 to 3, 5 & 6 and necessary affidavit of service with appropriate tracking report is placed on record. Accordingly, the said respondents are deemed to be served.
2. Mr.Kuljeet Rawal, the learned counsel for respondents No.4 and 7 has entered appearance.
3. By the present petition, the petitioner seeks to impugn the order dated 10.08.2015 whereby the plaintiff's right to lead further evidence was closed. On that date PW-1 was present, cross-examined and discharged. No other witness of the plaintiff was present. The impugned order notes that this is a simple suit for recovery filed by the petitioner and issues were framed on 08.11.1993. The suit was filed in the High Court and was thereafter

transferred to the present trial court. Despite lapse of more than 20 years since the issues were framed, the petitioner has been unable to complete his evidence. On these facts and circumstances, the trial court rightly closed the evidence of the petitioner.

3. Learned counsel appearing for the petitioner at the outset submits that a final opportunity be granted to the petitioner to lead evidence and that they would positively complete their evidence. He submits that only two more witnesses i.e. PW-2 and PW-3 have to be examined to complete their evidence and they would be willing to complete their evidence within two days. He further submits that PW-2 usually was present for his cross-examination but the trial court as per order dated 15.10.2008 had noted the submission of the learned counsel for the respondent that it would take some time to complete the cross-examination of PW-1. In those circumstances, the Trial Court had directed that PW-2 who was present on that date be discharged(deferred).

4. He further relies upon various orders on record, no doubt of 2008, to show that PW-2 was present in court.

5. Learned counsel appearing for respondents No.4 and 7 has vehemently opposed the present petition pointing out that his clients are the alleged guarantors to the loan and have been harassed for more than 30 long years for no fault of theirs. He submits that the Bank has taken unnecessarily long time to lead its evidence and repeatedly failed despite further opportunities.

6. The fact is that other than the three guarantors, namely, defendants No. 4, 6 & 7 who are appearing before the Trial Court, no other respondents/defendants are appearing before the Trial Court and are said to

be ex parte.

7. Be that as it may, it is clear that there appears to be gross negligence on the part of the petitioner.

8. Purely in the interest of justice and as a last and final opportunity, the petitioner Bank is granted a further opportunity to complete evidence/cross-examination of PW-2 and PW-3 subject to payment of costs of Rs.25,000/- which is payable only to defendants who are appearing before the Trial Court/concerned Court.

9. It is made clear that on all dates that are fixed by the Trial Court for the examination/cross-examination of the plaintiff's witnesses, they will be present in court. In case of any default whatsoever on the part of the PW-2 or PW3, the Trial Court would have a right to close the evidence of the plaintiff.

10. With these observations, the present petition stands disposed of.

JAYANT NATH, J

JULY 13, 2016

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