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

+ CRL.M.C. 2430/2016 and CrI.M.A. No. 10427/2016 (Stay)

M/S DREAMLAND PROMOTERS &
CONSULTANTS PVT. LTD

..... Petitioner

Represented by: Mr. Gulshan Sharma,
Advocate.

versus

M/S JAYCON INFRASTRUCTURE LTD.

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

22.09.2016

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1. Aggrieved by the order dated 21st January, 2015 closing the right of the petitioner to lead defence evidence in support of his case the petitioner preferred a revision petition which was dismissed by the impugned order dated 29th October, 2015, hence the present petition.

2. Learned counsel for the petitioner submits that the petitioner as an accused participated in the proceedings and no adjournment is attributed to him. Since the defence witnesses were required to be summoned and because the summons could not be served on them, the petitioner could not be penalised. It is thus prayed that one more opportunity to lead defence evidence be granted to the petitioner.

3. In the complaint case being CC 5358/1/11 titled as Jaycon Infrastructure Limited vs. Dreamland Promoters and Consultant Pvt. Ltd & Anr. under Section 138 of the Negotiable Instruments Act, 1818 (in short **CRL.M.C. 2430/2016**

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‘NI Act’) after recording of the complainant’s evidence and the statement of the two accused under Section 313 Cr.P.C. the matter was listed for defence evidence on 1st July, 2014. As per the list of witnesses the petitioner was to examine seven witnesses as under:

- a. Mr. Pawan Bhadana, Managing Director of M/s Dreamland Promoters and Consultants Pvt. Ltd. Having its office at 211-213, 2nd Floor, Krishna Apra Plaza, Sector-18, Noida, Uttar Pradesh.
- b. Mr. Ravi Surinder Singh Sandhu, S/o S.S. Sandhu Having its office at 536, Ground Floor, Defence Colony, New Delhi.
- c. Mr. Vishal Mittal, having its office at Plot No.1306, Sector-5, Vasundhra, Ghaziabad Architect of Project Crossing Republic, NH-24, Ghaziabad.
- d. Mr. Anil Kumar Sharma having office at 21-A, Second Floor, Nangli Rajapur, Nizamuddin East, New Delhi-110013, Chartered Account of M/s Dreamland Promoters and Consultants Pvt. Ltd with statement of accounts from 01.04.2007 and 31.03.2012.
- e. Record Clerk of Employees Provident Fund Organisation Regional Office SCO 4-7, Sector 17-D, Chandigarh with record of Jaycon Infrastructure Ltd. having Code No. PN-30266 from 01.01.2008 to 31.12.2011.
- f. Record Clerk from Service Tax Department, New Delhi with record of Jaycon Infrastructure Ltd. from 01.01.2008 to 31.12.2011.

g. Mr. Tirath Awana, S/o Bhup Singh, R/o Village Atta, Indira Market, Sector-27, Noida.

4. Thus witness No.1 was the Managing Director of the petitioner himself and on 1st July, 2014 learned counsel for the petitioner submitted that the witness Nos. 4 and 7 would be produced by the accused on his own and witness Nos. 2 and 3 be summoned by filing of process fee and with respect to witness Nos. 5 and 6 learned counsel will explain the reasons for examining them on the next date of hearing. On the next date of hearing exemption application was filed by witness No.1, that is, the Managing Director of the petitioner. However, DW-7 Mr. Tirath Awana was present. Since the learned Presiding Officer was on leave the matter was listed for 13th August, 2014 on which date Tirath Awana was examined and cross-examined as DW-1 and for further cross-examination and for the other defence evidence the matter was listed for 5th September, 2014. On 5th September, 2014 none appeared on behalf of the petitioner despite repeated calls. The Court also noticed that no PF was filed for service of summons to witness Nos. 2 and 3. Later, at 11.30 AM the petitioner appeared and after apprising him of the order the matter was listed for 27th September, 2014. On 27th September, 2014 the Presiding Officer was on leave and the matter was adjourned to 17th October, 2014. On 17th October, 2014 the cost of ₹5,000/- imposed on the petitioner was paid and it was noted that the process to summon the defence witnesses be taken up positively on that day itself and that defence witness Nos. 5 and 6 as per the list would be summoned if required after the examination of remaining witnesses. On the next date of hearing, that is, 19th November, 2014 again an exemption

application from personal appearance of Pawan Bhadana was filed by the counsel for Pawan Bhadana which was allowed with directions to appear on the next date. The Court again directed that for summoning of remaining witnesses process fee be filed on 3rd December, 2014. On 3rd December, 2014 notice to service of witness from Service Tax Department was received back unexecuted. The Court noted that summons were not supposed to be issued to said witness till orders and directions were passed. Counsel for the petitioner informed that defence witness No.4 has refused to appear and thus notice was required to be issued. The Court issued notice to witness Nos. 2, 3 and 4 on filing of process fee and listed the matter for 19th December, 2014. On 19th December, 2014 again an exemption application was filed for appearance of Pawan Bhadana which was allowed directing him to appear on the next date. It was also noted that the notice sent to defence witnesses was not received back and hence fresh notice to defence witness Nos. 2, 3 and 4 was sent on filing process fee. On 19th January, 2015 though witness Ravi Sandhu was present however, counsel for the petitioner sought adjournment as the main counsel was not available as he had to attend the last rites of a colleague's son. The learned Trial Court again accommodated the petitioner's counsel and also noted that summon sent to witness Anil Kumar Sharma was received back with report 'incomplete address' and that no address was provided by the counsel for the petitioner on that date and in case no address was provided by the counsel for the petitioner on that date, the witness shall not be summoned as many opportunities have been given. Again on 21st January, 2015 when witness Ravi Sandhu was present, proxy counsel for the petitioner sought adjournment as the main counsel was not

available due to illness of his wife.

5. Considering the fact that since 1st July, 2014 defence evidence had not proceeded except examination of one witness partly and no effective steps were being taken to lead the defence evidence the Court closed the right to lead further defence evidence.

6. As noted above the order sheets clearly indicate that on most of the dates either an exemption was filed on behalf of Pawan Bhadana, the Managing Director of the petitioner as the main witness or the counsel was not present. Even serious efforts to furnish the address of the witnesses who had to be summoned were not taken. Considering the conduct of the petitioner before the learned Trial Court, the learned Additional Sessions Judge dismissed the revision petition and, this Court finds no reason to disagree with the two orders.

7. Petition and application are dismissed.

MUKTA GUPTA, J.

SEPTEMBER 22, 2016

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