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

+ CM(M) 340/2016

SHRI RAJENDRA PRASAD ARORA
(DECEASED THR LRS)

..... Petitioner

Through: Mr.S.C.Jha, Advocate

versus

M/S SHYAM LAL BEHARI LAL AND ORS

..... Respondents

Through: Mr.Gagan Mathur, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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27.04.2017

CM(M) 340/2016

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 6th February, 2016 whereby the application of the petitioner to lead further evidence, has been dismissed by learned ARC-I, Central District, Tis Hazari Courts, Delhi.
2. Learned counsel for the petitioner has submitted that the reason for not being able to lead petitioner's evidence on 4th July, 2015 was due to illness of the petitioner himself. Apart from that, the learned counsel for the petitioner also had gone to his native place during vacation to attend his ailing mother. He could return from there only on 2nd July, 2015 due to which advance copy of the affidavit could not be sent to the respondent and the witness also could not be summoned. In the circumstances, he has prayed for one more opportunity to lead further petitioner's evidence.

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3. The application for leading further petitioner's evidence has been dismissed by learned ARC for the reasons extracted hereunder:-

“Perusal of record shows that Sh. Rajendra Pershad Arora was examined as well as cross-examined on 07.03.2015. Thereafter, time was sought by the petitioner to examine other witness and therefore, petitioner was given time till 06.05.2015 to file evidence and to summon other witnesses. On 06.05.2015 again no witness was produced by the petitioner and again time was given to the petitioner to file evidence by way of affidavit of other witnesses they want to examine within a month and the case was fixed for petitioner's evidence for 04.07.2015. On 04.07.2015, counsel for the petitioner appeared before the court. However, no affidavit of evidence or any witness was summoned by counsel for the petitioner even on that date. On that date, no averment was made by counsel for the petitioner regarding wrong noting of the date or the alleged illness of the petitioner or illness of his mother. Further, no medical documents has been filed by counsel for the petitioner showing that either Sh. Rajendra Pershad Arora or mother of counsel was not well before 04.07.2015. Further, petitioner has already been examined and cross-examined and his illness and his subsequent death after 04.07.2015 does not have bearing for summoning any witness before the court. Even, present application has been moved on 06.10.2015, i.e., three months after the alleged petitioner's evidence was closed and the matter was kept for respondent's evidence. Had there been any genuine reason for leading any additional evidence, the present application should have been moved immediately after petitioner's evidence was closed on 04.07.2015. Hence, no ground is made out for allowing the present application. Accordingly, application moved by the petitioner for reopening of petitioner's evidence is dismissed as rejected.

To come up for examination as well as cross-examination of RW now for 06.04.2016.

*Sd/-
CCJ-cum-ARC-I(central)
THC/Delhi/06.02.2016”*

4. Learned counsel for the petitioner has placed on record the copy of the proceedings before the learned ARC as Annexure 'C' to 'G'.
5. Learned counsel for the petitioner has also filed the copy of list of witnesses to be examined which is as under:-

List of witnesses dated 19th November, 2014

- (i) *Petitioner himself.*
- (ii) *Shri Kamal Kishore S/o Shri Hukum Chand R/o 4, 165 to 166, 203 to 232, Corronation Building, Chandni Chowk, Delhi-110006.*
- (iii) *Shri Megh Raj Kashyap S/o Shri Kamarpal Kashyap, No.34, 165 to 166, 203 to 232, Corronation Building, Chandni Chowk, Delhi-110006.*
- (iv) *Concerned clerk from the office of MTNL regarding the bill.*
- (v) *Concerned clerk from the office of BSES Yamuna Power Ltd. regarding the bill.*
- (vi) *Any other witness with the prior permission of this Hon'ble Court.*

6. Perusal of the record shows that the case was listed for petitioner's evidence on 19th November, 2014 but P.O. was on leave on that date. On 2nd January, 2015 though the petitioner was present along with his counsel and filed his examination-in-chief by way of affidavit but sought adjournment on the ground that petitioner has not brought the original document. Learned trial Court adjourned the matter to 7th March, 2015. On 7th March, 2015, the petitioner Rajendra Prasad Arora was examined and discharged. No other witness was present or summoned for that date and the Court adjourned the matter for remaining petitioner's evidence on 6th May, 2015. Situation remained same on that date also. Though the petitioner was present in person, no other witness was present or summoned for the said date. The learned ARC gave last opportunity to the petitioner to lead evidence on 4th

July, 2015 with direction to state within a month as to what other witnesses were to be examined. On 4th July, 2015 despite last opportunity being given, neither any witness was summoned nor present. The learned ARC after noting the past conduct of the petitioner, closed the petitioner's evidence and fixed the case for the respondents' evidence.

7. When the case was at the stage of respondents' evidence, the petitioner expired and an application under Order XXII Rule 3 CPC was filed for bringing on record the legal heir, Mr. Mohit Arora which was allowed on 22nd August, 2015 by the Court. The matter was adjourned to 12th October, 2015 for RE. It was at that stage when the application was moved by the legal heir of the petitioner to lead further evidence on the following grounds:-

- (i) The petitioner could not prepare the evidence and summon the witness due to his illness.
- (ii) The counsel for the petitioner noted the wrong date of hearing i.e. instead of 4th July, 2015 noted 8th July, 2015.
- (iii) The counsel had gone to Bihar during vacations and after attending his ailing mother could return only on 2nd July, 2015. Therefore, he could not send advance copy of the evidence or summon the witness.

8. Learned ARC has rightly rejected all the above grounds for the reason that irrespective of wrong noting of date of hearing, on 4th July, 2015 counsel for the petitioner as well the petitioner were present on that date of hearing. None of the above reasons were brought to the notice of the Court on 4th July, 2015 when petitioner's evidence was closed.

9. Even otherwise despite the direction dated 6th May, 2015 to state as to which other witnesses were to be examined, that direction was not complied

with. Thus right from the date when the case was listed for petitioner's evidence till it was closed, neither any witness was summoned nor produced before the learned ARC on any of the date of hearing.

10. Learned ARC has rightly noted that the application dated 4th September, 2015 was also filed on 6th October, 2015 i.e. after a period of three months from the date when petitioner's evidence was closed. Since ample opportunities have been given and availed by the petitioner Rajendra Prasad Arora during his life time and except examining himself, no other witness was ever summoned or produced, learned ARC had rightly closed the petitioner's evidence.

11. The impugned order does not require any interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

12. The petition is dismissed.

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Dismissed as infructuous.

PRATIBHA RANI, J.

APRIL 27, 2017

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