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**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ W.P.(C) 3666/2017 and CM No.16129/2017 (Stay)

**Date of Decision: 18.05.2017**

DEEPAK ARORA

..... Petitioner

Through: Mr.Chandra Shekhar, Advocate

versus

M/S MOTION PICTURES ASSOCIATION ..... Respondent

Through: Mr.Rajesh Bhatia, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT(ORAL)**

1. Arguments addressed on behalf of either side.
2. The petitioner assails the impugned order dated 20<sup>th</sup> February, 2017 of the learned POLC-XVI in Old ID No.69/2013, new LIR No.5295/2016 whereby an application under Order XVIII Rule 17 r/w Section 151 CPC filed on behalf of the workman seeking recalling of MW-1 Sh. Jaidev Ghoshal, (the management witness) for cross-examination was declined.
3. It is has been submitted on behalf of the workman that Mr.G.V. Gopinathan, the counsel for the workman due to his ailment and indisposition due to his suffering from a severe headache and fever could not appropriately cross-examine the

management witness MW-1 Jaidev Ghoshal on 9<sup>th</sup> July, 2016.

4. A further submission was made on behalf of the petitioner that the petitioner was harassed by the management during the proceedings and even before which is refuted on behalf of the management, which is, however, not germane for consideration of the present *lis*.

5. The petition has been vehemently opposed by the learned counsel for the respondent/management placing reliance on the observations in the order dated 20<sup>th</sup> February, 2017 and placing reliance on the judgment of Hon'ble Supreme Court in the case of ***K.K.Velusamy V. N. Palanisamy*** in Civil Appeal Nos. 2795-2796/2011 decided on 30<sup>th</sup> March, 2011 to contend that the inherent powers under Section 151 CPC cannot be invoked routinely and much less on the mere asking.

6. It has also been submitted on behalf of the respondent/management that there was no assertion made by the counsel for the workman during the course of cross-examination of the witness on 9<sup>th</sup> July, 2016, when the witness MW-1 Sh.Jaidev Ghoshal was put to cross-examination, that he was unwell. It has also been submitted on behalf of the respondent that the submission made in the application before the Labour Court dated 23<sup>rd</sup> July, 2016 to the effect that a request had been made by the counsel for the workman for deferring of the cross-examination to some other date and that the learned Labour Court had been pleased to permit the workman to move an application for summoning the witness

for re-examination and the Court had already ordered the closure of the evidence, was not borne out from the record. It was thus submitted on behalf of the management that no ground was made out from the record for allowing the application and the application merits dismissal.

7. On behalf of the workman, it has been submitted that the affidavit of the counsel for the workman, who conducted the cross-examination of MW-1 Sh. Jaidev Ghoshal has not been considered by the learned Labour Court, which had been duly filed in support of the averments made in the application dated 23<sup>rd</sup> July, 2016.

**8. On a consideration of the impugned order, the record of the Labour Court and the submissions made on behalf of either side, it is essential to observe that the observations of the Hon'ble Apex Court in K.K.Velusamy Vs. N. Palanisamy in Civil appeal Nos. 2795-2796 of 2011, decided on 30<sup>th</sup> March, 2011 are *inter alia* categorical to the effect that where the interest of justice requires the exercise of the inherent powers, the same ought to be so invoked.**

9. Taking into account that the application of the workman/petitioner herein under Section XVIII Rule 17 CPC read with Section 151 CPC dated 23<sup>rd</sup> July, 2016 was supported by an affidavit of the counsel Mr.G.V.Gopinathan, through which application it had been asserted that he was unwell and thus unable to conduct the cross-examination of MW-1 Sh.Jaidev Ghoshal, in the interest of justice, the writ

petition is allowed with only a single opportunity being granted to the petitioner to conduct the cross-examination of the witness MW-1 Sh. Jaidev Ghoshal. No further opportunity beyond that would be granted. The impugned order dated 20<sup>th</sup> February, 2017 is thus set aside as per the directions herein above.

10. The petition and the application are disposed of in the above terms.

The record of the Labour Court be returned along with the copy of this order.

*Dasti.*

**ANU MALHOTRA, J**

**MAY 18, 2017/SV**