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

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Date of Decision: May 9, 2017

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CM(M) No.522/2017

SARLA RANI

..... Petitioner

Through: Mr.Ravi Joshi, Advocate.

versus

URVASHI DUA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.17647/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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1. The petitioner is aggrieved by the order dated 15th March, 2017 whereby the application filed by him under Order XVIII Rule 17 read with Section 151 Code of Civil Procedure to avail the opportunity to lead defence evidence has been declined by the learned Trial Court.
2. The reasons for which the opportunity to lead defence evidence has been declined are recorded by the learned Trial Court as under:-

"I have heard the arguments advanced by ld.Counsels of the parties, who have argued according to the averments made in the application as well as reply and it is not clear as to why the defendant should not appear in the case alongwith her counsel, when she is contesting the matter tooth and nail as has been

moving one application after another and further why no advance copy of any affidavits of any DWs was supplied to the plaintiff and on what basis the counsel can have any reasonable mis-impression logically under the facts and circumstances of the case, moreover, ignorance of law is not an excuse and further the provision, under which the application has been moved strictly empowers the Court to recall a witness, at any stage of the suit, who has been examined and may, subject to the law of evidence, put such questions to him as the Court thinks fit and therefore it appears that the present application can not be allowed and is liable to be dismissed. I therefore, hereby, dismiss the application with no order as to cost.

Put up on 29.05.17 for final arguments by the defendant who may submit written arguments with copy to Sh.J.K.Chawla in advance and against receipt."

3. Learned counsel for the petitioner has submitted that the application under Order VI Rule 17 read with Section 151 Code of Civil Procedure seeking amendment of the written statement was filed by the petitioner/defendant. Written submissions on this application were also filed by the petitioner/defendant on 1st July, 2016. Thereafter the matter was posted for orders on the application under Order VI Rule 17 CPC for 16th July, 2016. The order was not pronounced on that date and it was further listed for orders on 1st August, 2016. Vide order dated 3rd August, 2016 pronounced at 4:00 PM, the application under Order VI Rule 17 CPC filed by the petitioner/defendant was dismissed.

4. Learned counsel for the petitioner submitted that the petitioner came to know about the order dismissing the application seeking amendment of the written statement, only on 18th January, 2017 when the petitioner/defendant appeared before the Court under the impression that final arguments were to be advanced on the application under Order VI Rule

17 CPC. It has been contended that on inspection of record on 21st January, 2017 by her counsel the petitioner/defendant came to know that in fact final arguments were to be heard in the Civil Suit bearing No.57/2016. Thereafter, she filed an application under Order XVIII Rule 17 read with Section 151 CPC seeking an opportunity to lead defence evidence by explaining the reasons due to which on two dates listed by the learned Trial Court i.e. 23rd September, 2016 and 21st October, 2016 for defence evidence, the opportunity could not be availed.

5. During the course of hearing, learned counsel for the petitioner was requested to explain as to how the petitioner could not keep track of the case when it was listed for orders on application under Order VI Rule 17 CPC on 16th July, 2016, 1st August, 2016 and then on 3rd August, 2016 when the order was pronounced as well of subsequent dates fixed for purpose of defence evidence. Learned counsel for the petitioner was also requested to explain whether after 3rd August, 2016 when the application under Order VI Rule 17 CPC was dismissed, till 18th January, 2017 when petitioner appeared before the Court, any inspection was carried out to ascertain the status of the case or the status of the application under Order VI Rule 17 CPC and how on the date 18th January, 2017 petitioner could appear without being aware of the past proceedings/dates of hearing in the matter.

6. Learned counsel for the petitioner has not been able to explain as to why no track could be kept by the petitioner about the progress in the case though twice the matter was listed for defence evidence. The defence evidence was closed on 21st October, 2016 and the matter was listed for final arguments on 3rd January, 2017.

7. In the decision reported as ***K.K.Velusamy V. N.Palanisamy (2011) 11 SCC 275***, the principles governing the exercise of discretion under Section

151 CPC have been summarized in para 12 of the report as under:-

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with

what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

8. The petitioner has not been able to give any justification of her conduct after the application seeking amendment was listed for orders. The petitioner could not have remained under the impression for such a long time of the case being listed for final arguments on the application under Order VI Rule 17 CPC as written submissions had already been filed and she did not appear on the dates fixed prior to 18th January, 2017.

9. It is the case of the petitioner that the inspection of the record was done on 21st January, 2017 when on 18th January, 2017 the petitioner came to know that the case was listed for final arguments. There is no explanation as to how the petitioner came to know about the date of hearing and could appear on 18th January, 2017 without the inspection of the record. The application under Order VI Rule 17 CPC was dismissed on 3rd August, 2016 and till 18th January, 2017 there was a long time gap which required the

petitioner to be vigilant enough to know not only the status of the application but also the purpose for which the case was listed i.e. whether for disposal of application under Order VI Rule 17 CPC or for any other purpose.

10. On inability of the petitioner to come out with any explanation either for herself or why the counsel could not appear after the application seeking amendment was disposed of as well why the record was not inspected to know the status of the application seeking amendment, the petitioner cannot take the plea that the two opportunities provided by the learned Trial Court for leading defence evidence and not availed, were for some justifiable reason.

11. The above noted conduct shows lack of diligence on the part of the petitioner/defendant. It remained unexplained as to why after the case was listed for orders on the application under Order VI Rule 17 CPC, the petitioner took such a long time to file an application for seeking an opportunity to lead defence evidence when the case was at the stage of final arguments. The petitioner/defendant came out of slumber only after two opportunities for leading defence evidence and one opportunity for final arguments prior to 18th January, 2017 were missed.

12. I am conscious of the fact that technicalities should not be allowed to come in the way of administration of justice but, however, at the same time one party cannot be allowed to perpetuate injustice to other party.

13. The lame excuses given by the petitioner, unfounded vague allegations attributing adjournment i.e. on two dates of hearing despite the case being listed for orders on the application under Order VI Rule 17 CPC, the order was not pronounced, cannot be given indulgence by this Court. It was for the petitioner to atleast inspect the record when the application under Order VI Rule 17 CPC was adjourned second time for orders.

14. The impugned order does not suffer from any illegality or infirmity so as to warrant any interference by this Court in exercise of power vested under Article 227 of the Constitution of India.

15. The petition is dismissed.

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Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 09, 2017

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