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

+ CM(M) 510/2017

NITIN CHANDRA

.....Petitioner

Through: Mr.Alok Kumar, Mr.Neeraj Gupta &
Mr.Abhishek Paruthi, Advocates.

versus

SARDAR GURDEEP SINGH (NOW DECEASED)

THR LRS

.....Respondents

Through: Ms.Pruna Mehta, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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05.05.2017

CM No.17240/2017 (Exemption)

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

CM(M) 510/2017

1. This petition has been filed under Article 227 of the Constitution of India against the order dated 1st April, 2017 passed by learned ARC in Eviction Petition No.6376/2016 whereby the petitioner was directed to pay the cost of ₹20,000 for the cross-examination of PW-1 who was not present on the next date of hearing for his cross-examination as he was expired.
2. The learned Trial Court vide order dated 7th May, 2016 imposed a cost of ₹50,000/- on the petitioner for cross examination of the PW-1 which reads as under:

“07.05.2016

*Present: Ms.Pruna Mehta, Ld.Counsel for petitioner
alongwith PW-1 in person.*

Respondent in person.

Matter is fixed for cross examination of PW-1.

*On 01.04.2016, PW-1 has tendered his evidence
and cross was deferred in the presence of Ld.Counsel for
respondent.*

*Respondent submits that his counsel is busy in
Karkardooma Court and he has last spoken with him at about
10.30 am and he was in Karkardooma Court only and
instructed him to seek an adjournment for 12.00 noon.*

*Ld.Counsel for petitioner is strongly opposed and
submits that right to cross examination of PW-1 be closed.*

Heard. Perused.

*PW-1 is a senior citizen and he is present in the
Court since 10.00 am in the morning.*

*On the last date of hearing, date was given in the
presence of Ld.Counsel for respondent and at that time he has
not mentioned anything about his prior engagement at
Karkardooma Court.*

***In such circumstances, final opportunity is
granted for cross-examination of PW-1, subject to cost of
₹50,000/- to be paid by the respondent to the petitioner.***

*Put up for cross examination of PW-1 on
11.05.2016.*

Sd/-

ACJ/CCJ/ARC(South)/

07.05.2016

At 11.50 am.

*At this stage, Sh.Abhishek Paruthi, Ld. Counsel for respondent
has appeared.*

Put up on date fixed.

Sd/-

ACJ/CCJ/ARC(South)/

07.05.2016

3. The petitioner filed CM(M) 450/2016 and this Court vide order dated 10th May, 2016 reduced the cost from ₹50,000 to ₹20,000 for the following reasons:

“CM(M) 450/2016 & C.M. No.17468/2016 (stay)

Petitioner is aggrieved by the order dated 07.5.2016 to the limited extent that an enormous cost of Rs.50,000/- has been imposed upon him. Submission was that a pass over had been sought by the learned counsel for the petitioner which was well within his right but although the pass over had been granted and an opportunity had also been granted to cross-examine PW-1 but this huge cost of Rs.50,000/- had been imposed on the petitioner (respondent before the Trial Court).

Noting the above submission as also the impugned order which in fact has mentioned the timing in the order on which itself reflects that at 10.30 a.m. a pass over had been sought till 12.00 noon. Learned senior counsel for the petitioner submits that it was in the pre-lunch hour itself that the matter stood adjourned imposing the aforementioned cost, the cost of Rs.50,000/- is reduced to Rs.20,000/-.

Petition disposed of.

Order dasti under signatures of the Court Master.”

4. The impugned order dated 01st April, 2017 passed by the learned ARC is extracted as under:-

**“RC ARC No.11/2016
Sardar Gurdeep Singh Vs. Mr.Nitin Chandra**

01.04.2017

**Present:- Ms.Prerna Mehta, Ld.Counsel for petitioner
alongwith PW-2 and PW-3.**

Sh.Aviash Gaba, Ld.proxy counsel for respondent.

Ld.proxy counsel for respondent has requested for adjournment stating that the main counsel is ill. The Ld.counsel for petitioner has strongly opposed the adjournment stating that this is a delaying tactics and due to these delay tactics, the petitioner's witness who is PW-1 has passed away in this case and that his evidence could not be concluded. She has also stated that the respondent has not paid the previous cost of `20,000/-.

Adjournment is sought on account of personal ground of respondent counsel and proxy counsel for respondent has stated that he will file the medical certificate on the next date. Adjournment is granted subject to payment of previous cost of `20,000/- and it is made clear that if the cot is not paid on the next date, the respondent will have no opportunity to cross-examine the witnesses of the petitioner.

Put up for PE, on 06.05.2017.

*Sd/-
ACJ/CCJ/ARC(South)/01.04.2017"*

5. Learned counsel for the petitioner submits that since the cost was to be paid for cross-examination of PW-1 who has already expired and now the petitioner cannot avail the opportunity to cross-examine PW-1, he is not required to pay the cost of ₹20,000 which was imposed only for availing the opportunity to cross-examine PW-1.
6. Learned counsel for the respondent submits that the cost was imposed in view of the past conduct of the petitioner herein and not for cross-examination of the PW-1.

7. The above submission of learned counsel for the respondent cannot be accepted in view of the order of the learned Trial Court dated 7th May, 2016 extracted above. Vide order of this Court dated 10th May, 2016 in CM(M) 450/2016 the limited relief given to him was by reducing the cost from ₹50,000 to ₹20,000.

8. Since cost was imposed only for the purpose of cross-examination of PW-1 which cannot be availed, in view of the death of the PW-1, petitioner is not required to pay the cost of ₹20,000.

9. The petition is allowed.

10. Copy of the order be sent to the concerned Court for information and compliance and be also given dasti to learned counsel for the parties, as prayed.

CM No.17239/2017 (stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 05, 2017
'hkaaur'