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

+ CM(M) 1180/2016 & CM No.42907/2016

M/S INDUSTRIAL PROCESSORS &
METALLIZERS (P) LTD

..... Petitioner

Through Mr.G.P.Singh & Mr.G.S.Thakur,
Advocates

versus

M/S UT WORLDWIDE (INDIA) PVT LTD Respondent

Through Mr.Abhay Raj Verma & Ms.Priyanka
Ghosh, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.01.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 15.09.2016 by which the right of the petitioner/counter-claimant for leading evidence in the counter claim was closed.
2. The respondent has filed the present suit for recovery of Rs.1,41,041/- . The petitioner has filed a counter claim for recovery of Rs.6,62,369/-.
3. I have heard the learned counsel for the parties.
4. The learned counsel for the petitioner has pointed out two orders dated 09.03.2015 and 21.09.2015. He submits that earlier the court had directed that the respondent shall lead evidence first in the main suit as well as for the counter claim as plaintiff's evidence for both the cases. Now, the sequence has been changed without any rhyme or reason and hence, on

15.09.2016, the witness of the petitioner was not present.

5. The learned counsel for the respondent has relied upon the orders dated 04.04.2016 and 22.07.2016 to submit that the earlier orders were by passed whereby the respondent was to lead evidence first.

6. It is obvious that there is some confusion in the order of the trial court. On 09.03.2015, it was noted that the defendant of the counter claim, i.e. the respondent shall lead evidence first. On 21.09.015 it was clarified that the suits have been consolidated for the purpose of evidence with the directions that the plaintiff/respondent shall lead evidence in the main suit as well as for the counter claim as plaintiff's evidence for both the cases and that the defendant/petitioner shall lead evidence in the main suit as well as for the counter claim as defendant's evidence for both the cases. The directions have subsequently on 04.04.2016 being given a go by without noticing earlier orders and without giving any reasons for the change in sequence.

7. It appears that these subsequent orders have been passed without the knowledge of the earlier orders and without any assistance from the learned counsel for the parties who never pointed out the earlier directions given vide orders dated 09.03.2015 and 21.09.2015 of the court.

8. I have to bear in mind to maxim of equity, namely, "*Actus Curiae Neminem Gravabit*" – An Act of the court shall prejudice no man. So it would be unfair to close the petitioner's right to lead evidence on account of any mistake committed by the court.

9. In view of the above, the present petition is allowed. The impugned order is set aside. Evidence shall be led in the sequence as directed by the orders dated 09.03.2015 and 21.09.2015 which are reproduced at pages 71

and 100 of the paper book. All the pending applications are also allowed as above.

JAYANT NATH, J.

JANUARY 18, 2017/v