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

+ CM(M) No.694/2017

TT LTD

..... Petitioner

Through: Ms. Shilpi Jain Sharma, Adv.

versus

NARYAN GINNING & OIL MILLS P LTD & ANR. ... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.07.2017

CM No.24064/2017 (for exemption).

1. Allowed subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.694/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 5th November, 2016 of the Additional District Judge (Central-07), Delhi in CS No.610099/2016 filed by the petitioner / plaintiff) allowing the application of the petitioner / plaintiff under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) for recall of PW1 subject to costs of Rs.20,000/- to the opposite party. The petitioner / plaintiff in the prayer clause in the petition has sought setting aside of the order.

4. I have thus put to the counsel for the petitioner / plaintiff that the petition can be allowed in terms of the prayer clause.

5. The counsel for the petitioner / plaintiff then states that she is aggrieved only by the imposition of costs of Rs.20,000/- and not by the

order allowing her application under Order XVIII Rule 17 of the CPC.

6. However the prayer clause in the petition does not state so.

7. The counsel for the petitioner / plaintiff states that in future, she will read before signing, and not allow such mistaken pleas to be taken before the Court.

8. I have heard the counsel for the petitioner / plaintiff and have perused the record.

9. A perusal of the record shows that PW1 was examined in chief prior to 18th February, 2015 and cross-examination of the PW1 was completed on 2nd August, 2015 and the suit adjourned for remaining evidence of the petitioner / plaintiff to 3rd October, 2015.

10. An application aforesaid of the petitioner / plaintiff for recall of PW1 came up before the Additional District Judge on 3rd October, 2015 when the same was withdrawn.

11. The petitioner / plaintiff thereafter moved an application seeking permission to file additional documents.

12. The said application was allowed on 29th March, 2016 subject to payment of costs by the petitioner / plaintiff to the respondent / defendant of Rs.4,000/-.

13. The order dated 29th March, 2016 also mistakenly records that PW1 had already been permitted to be re-called vide order dated 3rd October, 2015 when in fact the application for re-call of PW1 was withdrawn on 3rd October, 2015.

14. The petitioner / plaintiff thereafter filed the application aforesaid for recall of PW1 to prove the documents which had been permitted to be taken

on record vide order dated 29th March, 2016.

15. The said application, vide impugned order dated 5th November, 2016, has been allowed subject to costs of Rs.20,000/-.

16. I am of the opinion that once the application of the petitioner / plaintiff for taking documents on record had been allowed on 29th March, 2016, opportunity to the plaintiff to prove the said documents was implicit inasmuch as mere taking on record of the documents without granting an opportunity to the petitioner / plaintiff to prove the same was meaningless. In this view of the matter, imposition of costs of Rs.20,000/- indeed appears to be unjust.

17. Notice of this petition has not been issued as yet. However since the order impugns only the imposition of costs and which is a matter between the Court and the litigant, need to issue notice to the respondent / defendant is not felt.

18. The order dated 5th November, 2016 is modified by reducing the costs from that of Rs.20,000 to Rs.5,000/-.

19. At this stage, I have enquired from the counsel for the petitioner / plaintiff the proceedings in the suit after the impugned order dated 5th November, 2016.

20. The counsel for the petitioner / plaintiff states that the petitioner / plaintiff has since closed its evidence.

21. On further enquiry, whether the petitioner / plaintiff in further evidence has proved the documents, reply in the affirmative is given.

22. The counsel however has no explanation how the documents were permitted to be proved without payment of costs imposed vide the impugned order.

23. Be that as it may, if costs in terms of order dated 5th November, 2016 is to be recovered from the petitioner / plaintiff it will be in the sum of Rs.5,000/- and not Rs.20,000/-.

24. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

JULY 12, 2017

‘pp’..