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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 839/2017 & CM No.27862/2017 (for stay)
M/S RUCHI SOYA INDUSTRIES LTD Petitioner
Through: Mr. Varun Goswami, Mr. Shourya
Mehra & Mr. Rahul Sinha, Advs.
Versus
M/S MADAN EXIM PVT LTD & ANR Respondents
Through: Mr. Sanjay Kumar, Adv.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **17.08.2017**

1. This order is in continuation of the earlier orders dated 4th August, 2017 and 9th August, 2017.
2. The counsel for the respondents / defendants appears and states that hearing be adjourned because he has instructions from his clients to file a petition impugning the order dated 21st March, 2017 in the suit closing the evidence of the respondents / defendants and that this petition as well as the petition to be filed by the respondents / defendants be heard together.
3. The counsel for the petitioner / plaintiff opposes contending that the respondents / defendants have till now not taken any steps for impugning the order dated 21st March, 2017 closing their evidence and now want to impugn the same only to take advantage of the order sought by the petitioner / plaintiff in this petition.
4. The order dated 21st March, 2017 is shown by the counsel for the petitioner / plaintiff on his iPad; he is requested to place a print out of the same on record of this petition.

5. It is also contended by the counsel for petitioner/plaintiff that CM(M) No.318/2017 preferred by the respondents / defendants impugning only the order dated 6th October, 2016 closing their right to cross-examine PW2 was allowed by this Court on 30th March, 2017 and at that stage also the order dated 21st July, 2017 was not impugned.

6. The counsel for the respondents / defendants rejoins by contending that he has not had a chance to challenge the order dated 21st March, 2017 closing the evidence of the respondents / defendants owing to the developments in the suit.

7. I have considered the rival contentions.

8. The counsels having been heard, it is not deemed appropriate to await the filing of the petition by the respondents / defendants impugning the order dated 21st March, 2017 in the suit closing the evidence of the respondents / defendants and which wait would further delay the disposal of the suit from which this petition arises.

9. Moreover, this Court, in exercise of powers under Article 227 of the Constitution of India, is empowered to also grant an opportunity to the respondents / defendants to lead evidence, if finds a case therefor to have been made out.

10. In my opinion, the filing of CM(M) No.318/2017 by the respondents / defendants impugning the order dated 6th October, 2016 does not come in the way of the respondents / defendants now impugning the order dated 21st March, 2017 closing their evidence. It does not appear that CM(M) No.318/2017 was filed after 21st March, 2017. Moreover, if this petition were to be allowed and the respondents / defendants are to now cross-

examine the PW2, the same alone would entitle them to lead their evidence after the said cross-examination.

11. The counsel for the respondents / defendants on enquiry states that the respondents / defendants have to examine only two witnesses viz. the authorized representative and the accountant of the respondents / defendants companies.

12. This petition is disposed of with the following directions:

- (i) The petitioner / plaintiff is granted an opportunity to produce PW2 for cross-examination;
- (ii) It is informed that the next date before the learned Additional District Judge (ADJ) is 21st September, 2017. Petitioners / plaintiffs to produce PW2 before the learned ADJ at their own costs and responsibility on the next date i.e. 21st September, 2017 and on which date the said witness will be cross-examined by the counsel for the respondents / defendants;
- (iii) If the petitioner/plaintiff does not produce PW2 on 2nd September, 2017, his testimony shall not be read in evidence;
- (iv) If the counsel for the respondents / defendants does not cross-examine the said witnesses on 21st September, 2017, their right to cross-examine PW2 shall stand closed and the examination-in-chief and the cross-examination of PW2 done till then, shall be read in evidence;
- (v) If for any reason the learned ADJ is unable to record further cross-examination or complete the cross-examination of PW2 on 21st September, 2017, the learned ADJ would give a date

therefor and the directions herein contained would then apply to the said date as well;

- (vi) The respondents / defendants, latest by eighth day of the conclusion of the cross-examination of PW2, shall file affidavit/s by way of examination-in-chief of their two witnesses aforesaid with advance copy to the counsel for the petitioner / plaintiff;
- (vii) On default in filing the said affidavit/s by way of examination-in-chief, the right to examine the witnesses will stand closed;
- (viii) If the affidavit/s by way of examination-in-chief are so filed, the said witnesses shall be cross-examined on the date/s to be given by the learned ADJ and on failure of the said witnesses or either of them to appear or on failure to cross-examine them, the party in default shall suffer the consequence and no adjournment shall be granted.

No costs.

Dasti.

RAJIV SAHAI ENDLAW, J

AUGUST 17, 2017

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