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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 936/2017
SHREE YOGMAYA MANDIR WELFARE AND MANAGEMENT
SOCIETY (REGD) Petitioner

Through: Mr. Sanjiv Sharma, Adv.

Versus

MUKESH VATS & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.08.2017

CM No.31271/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 936/2017 & CM No.31270/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 18th July, 2017 in Civil Suit No.83142/2016 of the Court of Civil Judge-02 (South), Saket Courts, New Delhi] closing the right of the petitioner / plaintiff to lead further evidence on behalf of the petitioner / plaintiff.
4. The counsel for the petitioner / plaintiff has been heard and the order sheets with effect from 23rd August, 2016 when issues were framed in the suit (the suit is of 2009 vintage) perused.
5. On 23rd August, 2016, the suit was posted for evidence of the petitioner / plaintiff to 15th September, 2016.

6. No steps were taken by the petitioner / plaintiff and adjournment was sought on 15th September, 2016. Clarifying that the said adjournment would be a last opportunity, the matter was adjourned to 5th October, 2016 for evidence of the petitioner / plaintiff with a direction to supply advance copies of the affidavits by way of examination-in-chief.

7. It appears that the advance copies of affidavits by way of examination-in-chief were not supplied and were supplied on 5th October, 2016 only when the respondents / defendants sought time for cross-examination and the suit was posted to 26th November, 2016 for the evidence of the petitioner / plaintiff. On 26th November, 2016, again adjournment was sought by the counsel for the petitioner / plaintiff and the suit was adjourned to 2nd January, 2017 for evidence of the petitioner / plaintiff. On 2nd January, 2017, the Judge was on leave and the suit adjourned to 30th January, 2017 for evidence of the petitioner / plaintiff.

8. On 30th January, 2017, PW1 was partly examined and the suit was adjourned to 13th February, 2017 by way of last and final opportunity for evidence of the petitioner / plaintiff. On 13th February, 2017, the witness of the petitioner / plaintiff did not appear and adjournment was sought and which was granted to 3rd March, 2017. On 3rd March, 2017, the Judge was on leave and the suit was adjourned to 22nd March, 2017 for evidence of the petitioner / plaintiff.

9. 22nd March, 2017, 26th April, 2017 and 29th May, 2017 were consumed in substitution of legal representatives of one of the defendants in the suit and the suit posted to 5th July, 2017 for petitioner / plaintiff's entire evidence.

10. On 5th July, 2017, the petitioner / plaintiff filed an application for summoning of the official witness which was allowed and the suit adjourned to 18th July, 2017.

11. On 18th July, 2017, the examination and cross-examination of PW1 was completed. Though on 5th July, 2017, the application of the petitioner / plaintiff for summoning witness had also been allowed but no steps in that regard had also been taken by the petitioner / plaintiff. It was in this circumstance that the evidence of the petitioner / plaintiff was closed and the suit posted to 2nd August, 2017 and 3rd August, 2017 for evidence of the respondents / defendants.

12. The aforesaid would show that the petitioner / plaintiff has availed of four adjournments for leading his evidence, without counting the adjournment on 5th October, 2016 when the suit was adjourned owing to the petitioner / plaintiff not supplying advance copy of the affidavits by way of examination-in-chief.

13. The counsel for the petitioner / plaintiff on enquiry states that on 2nd August, 2017, the respondents / defendants filed affidavit by way of examination-in-chief of only one witness and the suit posted to 3rd August, 2017 for cross-examination of the said witness; that on 3rd August, 2017 the right of the petitioner / plaintiff to cross-examine the said witness has been closed and the petitioner / plaintiff has filed an application in this regard before the Suit Court.

14. The counsel for the petitioner / plaintiff has argued that he needs to examine 14 official witnesses.

15. The petitioner / plaintiff having not taken any steps for service of the said witnesses between 15th September, 2016 and 18th July, 2017, is not entitled to any further opportunity and no error is found in the impugned order closing the right of the petitioner / plaintiff to lead further evidence.

It is not understandable as to on what basis grant of four adjournments at the stage of petitioner / plaintiff's evidence is not a ground for closure of the right to lead further evidence.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 29, 2017

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