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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.945/2017 & CM No.31696/2017 (for stay).
PARUL PRIYA SHARMA Petitioner
Through: Mr. M.K. Vashisht, Adv.
versus

SMART HEALTH LABS (P) LTD & ANR Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.09.2017**

CM No.31697/2017 (for exemption).

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

CM(M) No.945/2017 & CM No.31696/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 21st July, 2017 in CS No.58103/16 of the Court of Additional District Judge-05, New Delhi District, Patiala House Courts, New Delhi) closing the right of the petitioner / plaintiff to lead evidence and posting the suit to 25th September, 2017 for evidence of the respondent / defendants.
4. Though the petition is against an order of closure of right to take step in a proceeding and on the ground of the order being harsh and sufficient opportunity having not been given, but the counsel for the petitioner / plaintiff has not deemed it appropriate to, along with the petition, file the complete order sheet in the suit only from perusal whereof it can be deciphered whether the order impugned is harsh or not.

5. In spite of this Bench repeatedly asking the counsels to do so, the counsels fail to file order sheet and when called upon to do so seek adjournment, resulting in matters being not decided and repeatedly adjourned adding to the board of this Bench.

6. The counsel for the petitioner / plaintiff however states that he is the counsel for the petitioner / plaintiff before the Trial Court also and has personally seen the orders and the narrative given in the list of dates of the proceedings is correct.

7. As per the said narrative, the suit is for recovery of Rs.10,13,218/- and was instituted on 4th June, 2016; issues were framed in the suit on 21st November, 2016 and the suit posted for evidence of the petitioner / plaintiff for the first time on 7th February, 2017; on 7th February, 2017, the petitioner / plaintiff instead of leading evidence, filed an application for filing additional documents and which application was allowed on the same date and the matter adjourned to 14th March, 2017 for evidence of the petitioner / plaintiff; on 14th March, 2017, though the affidavits by way of examination-in-chief of the two of the witnesses of the petitioner / plaintiff including the petitioner / plaintiff were filed but an application under Order XIII of the Code of Civil Procedure, 1908 (CPC) was also filed which was allowed on that date and on request of the counsel for the respondents / defendants, the cross-examination was deferred; on 21st July, 2017, none of the witnesses of the petitioner / plaintiff appeared and adjournment was sought which was declined and evidence closed.

8. Making the counsel for the petitioner / plaintiff personally responsible for the aforesaid and believing the same, it does indeed appear that the order

closing the evidence of the petitioner / plaintiff is harsh and needs correction in exercise of powers under Article 227 of the Constitution of India.

9. Need to issue notice to the respondent / defendant is not felt since the respondent / defendant did not appear before the learned Additional District Judge on 21st July, 2017. The counsel for the petitioner / plaintiff has already stated before the Suit Court that besides the said witnesses, no other witnesses are to be examined.

10. The petition is accordingly allowed.

11. The order dated 21st July, 2017 is set aside and it is directed as under:-

- (a) The counsel for the petitioner / plaintiff to, immediately, in writing, inform the counsel for the respondent / defendant of today's order and also tender costs of Rs.5,000/- to the counsel for the respondent / defendant.
- (b) The petitioner / plaintiff and her witnesses to appear before the learned Additional District Judge on 25th September, 2017 on which date their statements shall be recorded.
- (c) If for reasons not attributable to the petitioner / plaintiff and her counsel, the deposition of both the witnesses is not recorded or not completed on 25th September, 2017, the petitioner / plaintiff and the witnesses to also appear on such subsequent dates which may be given.
- (d) If the cost is not paid or the petitioner / plaintiff and the witnesses do not appear on 25th September, 2017 or on any subsequent date which would be given, the petitioner / plaintiff would have no further opportunity and the evidence of the

petitioner / plaintiff shall be closed.

12. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

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