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

\+ CM(M) No.944/2017 & CM No.31694/2017 (for stay).

EXECUTIVE ACCESS (INDIA) PVT LTD. ..... Petitioner

Through: Ms. Parul Sharma, Adv.

versus

GREAT EASTERN ENERGY CORPORATION LTD..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 01.09.2017

CM No.31695/2017 (for exemption).

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

CM(M) No.944/2017 & CM No.31694/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 31st July, 2017 in CS No.7183/16 (Old CS No.478/12) of the Court of Additional District Judge-02 (South-East), Saket Courts, New Delhi) though allowing the application of the petitioner / defendant for an opportunity, after the evidence of the petitioner / defendant was closed on 30th November, 2016, to lead evidence but subject to costs payable by the petitioner / defendant of Rs.20,000/-.

4. The jurisdiction under Article 227 of the Constitution of India is not meant for interfering with such discretionary orders of costs.

5. The counsel for the petitioner / defendant has drawn attention to Section 35B of the Code of Civil Procedure, 1908 (CPC) and to the dicta of the Division Bench of this Court in ***Progressive Constructions Ltd. Vs.***

Sharma Associates and Contractors Pvt. Ltd. AIR 2001 Delhi 494 holding that the costs to be imposed are not to be penal in nature but reasonable, to compensate the opposite party for the costs of that date.

6. The respondent / plaintiff has instituted the suit from which this petition arises for recovery of Rs.7,44,525/- and the suit is of the year 2012. The learned Additional District Judge, in the impugned order, has stated the number of opportunities which the petitioner / defendant had availed of for leading defendant's evidence. The counsel for the petitioner / defendant has not disputed the said opportunities availed of. The same show that the petitioner / defendant availed of as many as four opportunities for evidence and merely on the ground of the witness of the petitioner / defendant being not present. So much so, that the cost imposed while granting one of such adjournments even was not paid. It was in this circumstance that the evidence was closed on 30th November, 2016 and the suit posted for final arguments on 6th February, 2017.

7. The petitioner / defendant still did not feel the need to immediately apply for an opportunity to lead evidence and filed the application for review accompanied with an application for condonation of delay in applying therefor.

8. It cannot be lost sight of that the petitioner / defendant, by such conduct, has successfully derailed the hearing of arguments in the suit by already seven months and it can well be estimated that by the time the arguments are heard, the total delay would be of about one year.

9. I fail to understand that for such delay and inconvenience to respondent/plaintiff caused, how the cost of Rs.20,000/- is not reasonable. It

cannot be lost sight of that the Advocates' fees have multiplied manifold in the last 16 years when the view cited was taken by the Division Bench of this Court. Moreover, it is found that the indulgence granted by this Court to advocates has led to the younger breed of advocates being under an impression that the Courts function in this manner only and will continue to grant adjournments, ensuring that the time for which the suit remained pending is of several decades. Unless the Courts start enforcing discipline, the said impression which the younger members of the bar seem to be having, will not change and thereby affecting the professional standards. The expressions 'in the interest of justice' and 'just one more opportunity' appear to have contributed to making this impression on the younger members of the bar.

10. There is no merit in the petition.

11. The costs imposed are found to be reasonable.

Dismissed.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017
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