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

+ CM(M) 1045/2017

M/S EXIM INDIA

..... Petitioner

Through: Mr. R.P.S. Bhatti & Mr. V.K. Singh,
Advs.

Versus

RAJESH DUGAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.09.2017**

CM Nos.34366-67/2017 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 1045/2017 & CM No.34365/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders dated 23rd February, 2016 and 24th April, 2017 in Suit No.422/16/12 of the Court of Additional District Judge-01 (ADJ) (East), Karkardooma Courts, Delhi.
4. Vide the impugned order dated 23rd February, 2016, the right of the petitioner / defendant to cross-examine PW1 was closed.
5. Vide the impugned order dated 24th April, 2017, the application filed by the petitioner/defendant for recall of the order dated 23rd February, 2016 was dismissed reasoning (i) that the petitioner/defendant, since the commencement of evidence, had been seeking adjournments; (ii) costs imposed had also not been paid; (iii) the application for recall was also filed

after long delay, on 13th April, 2017 only; and, (iv) the order of which recall was sought had attained finality.

6. Vide the subsequent order dated 11th August, 2017, the defence evidence of the petitioner / defendant was closed and the suit listed for final arguments to 5th September, 2017.

7. The counsel for the petitioner / defendant states that the suit is now listed for final arguments on 22nd September, 2017.

8. The challenge to the order dated 23rd February, 2016, closing the right of the petitioner / defendant to cross-examine PW1 has been made after one and a half years; this petition having come up today for the first time, is barred by principle of laches, acquiescence and waiver.

9. Merely by filing recall application, the order, challenge where to is so barred, cannot be revived. In fact, per ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy*** (2016) 14 SCC 238, the challenge to dismissal of application for recall of earlier order is not even met.

10. The only explanation of the counsel for the petitioner / defendant is that the father of the petitioner / defendant was suffering from cancer.

11. There is no pleading to the said effect and such vague arguments raised at the time of hearing *de hors* any pleading cannot be permitted to come in the way of the disposal of the suit filed by the respondent / plaintiff, it is informed for recovery of Rs.13 lacs odd from the petitioner / defendant. Even otherwise, if the petitioner / defendant has not allowed the illness of his father to interfere with his other affairs and has not allowed the illness of his father to affect the same, the said illness cannot be a ground for depriving

the respondent / plaintiff of his dues if any from the petitioner / defendant or for delaying the decision of the suit filed by the respondent / plaintiff.

12. The order dated 11th August, 2017 closing the evidence of the petitioner / defendant has not even been challenged. The same also shows the dialatory tactics being practiced by the petitioner by not challenging the order closing his defence evidence. Moreover the petitioner / defendant along with this petition has not even filed copies of the earlier order sheets in the suit from which it can be deciphered as to how many opportunities the petitioner has availed. The counsel for the petitioner / defendant in this respect, though admits that there has been delay by the petitioner / defendant, but is unable to tell the number of opportunities availed.

13. The suit as per its number is of the year 2012 and has already been pending for over five years.

14. The petition appears to have been filed only to derail the hearing scheduled on 22nd September, 2017.

15. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 19, 2017

‘gsr’..