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

+ CM(M) 1004/2017

SATYA BHUSHAN

..... Petitioner

Through: Ms. Shalini Kapoor, Mr. Dikshant
Khanna & Ms. Ruhini Dey, Advs.

Versus

RAMESH CHAND & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.09.2017

CM No.33411/2017 (for exemption)

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

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3. This petition under Article 227 of the Constitution of India impugns the orders [dated 9th August, 2017 and 21st August, 2017 in Civil Suit No.75294/2016 of the Court of Additional District Judge-II (ADJ), North-West District, Rohini Courts, Delhi] closing the right of the petitioner / defendant no.1 to cross-examine PW1 and dismissing the application of the petitioner / defendant no.1 for recall of the order closing the right of cross-examination.
4. The counsel for the petitioner / defendant no.1 has argued that 9th August, 2017 was the first opportunity for the petitioner / defendant no.1 and the learned ADJ erred in closing the right of cross-examination on that date itself.
5. The aforesaid argument proceeds on an erroneous presumption that a

counsel, for each stage of hearing in the suit, is entitled to several adjournments and is also contrary to Order XVII Rule 2 of the CPC which provides for a witness to be not returned unexamined when present before the Court. Supreme Court in *State of U.P. Vs. Shambhu Nath Singh* (2001) 4 SCC 667 and this Court in order dated 15th December, 2008 in CM(M) No.1268/2008 titled *Deepak Kumar Vs. Sushil Kumar* have held that the said provision in the CPC and the equivalent provision being Section 309 in Cr.P.C. have to be strictly followed by the Courts inasmuch as a witness who appears before the Court has given up his other work / vocation to be present before the Court and ought not to be asked to come repeatedly.

6. The counsel for the petitioner / defendant no.1 at this stage states that PW1 is the respondent/plaintiff himself and not a witness.

7. There is no merit in the said argument also inasmuch as the party to litigation itself appearing as a witness remains a witness and Order XVII Rule 2 makes no distinction between a party appearing as a witness or a non-party to the litigation appearing as a witness.

8. The counsel for the petitioner / defendant no.1 has then argued that the respondent no.1/plaintiff has himself been taking repeated adjournments in the suit and in this regard drawn attention to the order sheets with effect from 5th February, 2013 when issues were framed in the suit.

9. Though undoubtedly it is found that the respondent no.1 / plaintiff was taking adjournments in the suit but the same cannot be a ground for giving equal number of opportunities to the petitioner / defendant no.1. Moreover it is found that the petitioner / defendant no.1 did not oppose the said request of the respondent no.1/plaintiff and / or rather joined in the same. It appears that the adjournments were convenient to the petitioner / defendant no.1 also.

10. Though Order XVII Rule 2 permits a witness to be returned unexamined for exceptional circumstances but the circumstance pleaded in the application filed by the petitioner / defendant no.1 for recall of the order dated 9th August, 2017 cannot be said to be exceptional. The application was filed through a new advocate for the petitioner / defendant no.1 who filed his vakalatnama on 21st August, 2017 itself and blamed the earlier advocate for not cross-examining PW1. It was stated, that the earlier advocate due to heavy traffic between High Court and Rohini Courts Complex could not reach the Court on 9th August, 2017 for cross-examination.

11. With the city of Delhi being divided into several districts and the Courts for each district being situated far away from each other and with the status of traffic in Delhi, if such grounds were to be treated as 'exceptional', then there would be no case in which the orders closing the right/opportunity on account of absence of the counsel would not be challenged.

12. The counsel for the petitioner / defendant no.1 states that along with this petition, the affidavit of the earlier counsel also has been filed. It is stated that the affidavit of the earlier counsel was not filed before the ADJ for obvious reasons as the counsels hesitate to file their affidavits.

13. Though the Courts in the past have taken notice of the hesitation on the part of the counsels to file their own affidavits but what is found today is that in nearly all petitions under Article 227 of Constitution of India with respect to orders of Subordinate Courts closing the right/opportunity of either party to a suit or appeal at any stage thereof coming up before this Court, the new counsel engaged blames the earlier counsel for the default, without even giving an opportunity to the earlier counsel to defend himself. I have in the order dated 8th September, 2017 in CM(M) No.979/2017 titled

Madan Gopal Singh Vs. Mahinder Kaur noted that interestingly, in the last three months on this roster, it has been found that the advocates who in one case blame the earlier counsel, have themselves been blamed in some other cases coming up before this Court.

14. The learned ADJ in the impugned order has reasoned i) that the suit from which this petition arises is very old, being of the year 2005; ii) that as per the directions of the National Court Management Systems Committee of the Supreme Court and the State Court Management Systems Committee of this Court, the suits more than 10 years old have to be disposed of before the end of the year; iii) that if adjournments as sought continue to be given, the said target cannot be achieved; and, iv) that it is necessary to inculcate discipline and respect for the hearing before the Court.

15. I have already in *Dr. Anil Gupta Vs. Panna Lal* 2017 SCC OnLine Del 10242 held that if the Courts on the judicial side continue to grant such indulgence as is sought in this case also, the efforts of the Courts on the Administrative Side to do away with the backlog will never bear fruit.

16. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 13, 2017

‘gsr’