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

+ **CM(M) 1241/2017**

S.K. SHARMA

..... Petitioner

Through: Mr. Yudhishter Sharma & Mr.
Keshav Parashar, Advs.

Versus

B.L. VERMA & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.11.2017**

CM Nos.39487-88/2017 (both for exemption)

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

CM(M) 1241/2017 & CM No.39486/2017 (for stay)

3. The petition has been received post lunch on listing on urgent mentioning and has been taken up at 1535 hours.
4. The counsel for the petitioner / plaintiff has been heard.
5. This petition under Article 227 of the Constitution of India impugns the orders [dated 16th August, 2017 and 25th September, 2017 in CS DJ No.75286/2016 of the Court of Additional District Judge-II (ADJ), District North-West, Rohini Courts, Delhi] closing the right of the petitioner / plaintiff to cross-examine DW1 and dismissing the application of the petitioner / plaintiff for review.

6. Vide the impugned order dated 25th September, 2017, the suit from which this petition arises was adjourned for final arguments to 3rd October, 2017 and the order dated 3rd October, 2017 records that final arguments had been heard from the counsel for the petitioner / plaintiff. Vide the order dated 3rd October, 2017 the suit was adjourned to 24th October, 2017 with liberty to the counsels to file written arguments.
7. In the circumstances aforesaid, I have enquired from the counsel for the petitioner / plaintiff, whether the suit has been disposed of.
8. Upon the counsel for the petitioner / plaintiff replying in the negative, the proceedings of 24th October, 2017 have been enquired.
9. It is informed that the suit is listed today for passing order. The counsel for the petitioner / plaintiff however clarifies that on 24th October, 2017 he made an application informing the learned ADJ of filing of this petition and seeking adjournment and the learned ADJ vide order dated 24th October, 2017 issued notice for 25th October, 2017 and on 25th October, 2017 notice of the said application was issued to the respondents / defendants for today at 1400 hours.
10. The counsel for the petitioner / plaintiff states that today, at 1400 hours, the Suit Court was apprised of the matter being listed today.
11. A copy of the order dated 25th October, 2017 is handed over in the Court and is taken on record.
12. The counsel for the petitioner / plaintiff states that he is seeking only one opportunity.

13. The learned Additional District Judge, in the impugned order, has recorded that the suit from which this petition arises is of the year 2005. The counsel for the petitioner / plaintiff on enquiry states that the suit is for the relief of specific performance. In a suit for specific performance, the plaintiff is required to be ready and willing not only till the institution of the suit but till the passing of the decree and even beyond the decree to comply with the terms on which the decree, if any is passed in favour of the petitioner / plaintiff.

14. The fact that it is the petitioner / plaintiff who is found failing in wanting to cross-examine the DW1 on the date when the matter was listed therefor, reflects on the non-readiness and non-willingness of the petitioner / plaintiff. Even otherwise, the pendency of a suit for over 12 years does not behove well for the administration of justice.

15. The learned ADJ in the impugned orders has referred to the directive of the National Court Management Systems Committee of the Supreme Court and of the State Court Management Systems Committee of this Court for disposal of all suits pending for more than 10 years before 31st December, 2017.

16. If the Courts continue to grant adjournments as are sought by the counsels for the petitioners / plaintiffs themselves who should be interested in early disposal of the suits, the objective sought to be achieved will never be achieved.

17. Now that final arguments have been heard in the suit and the suit is on the anvil of final adjudication, it is not deemed appropriate to intervene at this stage.

18. The counsel for the petitioner / plaintiff has argued that DW1 has been managing his own cross-examination. It is pointed out that even on 16th August, 2017, the counsel for the respondents / defendants was not present and even if the counsel for the petitioner / plaintiff had appeared and wanted to cross-examine, adjournment would have been sought by DW1.

19. This Court cannot speculate as is being done by the counsel for the petitioner / plaintiff. If DW1, inspite of the counsel for the petitioner / plaintiff being ready and willing to cross-examine, had not subjected himself to cross-examination, though his evidence would have been closed but his examination-in-chief would not have been read. Now that the petitioner / plaintiff has failed to cross-examine, the right of the petitioner / plaintiff to cross-examine has been rightly closed.

20. No error is found in the impugned orders.

21. Option has been given to the counsel for the petitioner / plaintiff to take all the grounds as urged in this petition in remedy if any taken against the final judgment by withdrawing this petition but the counsel for the petitioner / plaintiff is not agreeable to the same.

22. The counsel for the petitioner / plaintiff makes the position worst by saying that he was not even available on the dates on which the final arguments are recorded in the order aforesaid to have been heard. The same shows the continuous negligence on the part of the petitioner / plaintiff in pursuing the suit. In spite of the right to cross-examine of DW1 having been closed, the counsel for the petitioner / plaintiff even then did not choose to

appear for final arguments. The said argument, instead of advancing the case of the petitioner / plaintiff, rather is another reason for dismissal of the petition.

22. No merit is found in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 02, 2017

‘gsr’..

(corrected & released on 27th December, 2017)