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

% Judgment delivered on: 16.08.2018

+ CRL.M.C. 1773/2018

DINESH KUMAR KUNDRA Petitioner

versus

THE STATE & ANR Respondents

Advocates who appeared in this case:

For the Petitioners : Mr.A.K.Tripathi, Advocate.

For the Respondent: Ms.Neelam Sharma, APP for the State.
SI Rajender Singh, P.S.Malviya Nagar.
Ms.Ananya Bhattacharya and Mr.Badri Dass,
Advs. for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

16.08.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.6353/2018 (exemption)

Exemption is allowed subject to all just exceptions.

CRL. M.C. 1773/2018 & Crl.M.A.6352/2018

1. The petitioner impugns order dated 23.08.2015 whereby right of the petitioner to lead defence evidence has been closed. It is contended by learned counsel for the petitioner that the petitioner was

apprehending arrest and as such could not appear before the Court for leading his evidence. He got bail on 13.06.2017 and thereafter got to know that his right has been closed and immediately approached this court.

2. Learned counsel for respondent No.2/complainant has strongly opposed the petition. She has contended that several opportunities have already been availed of by the petitioner and despite the same has failed to lead any evidence. She further submits that petitioner has tried to mislead the Court as he had appeared before the Court and stated that the matter was settled and even a Memorandum of Understanding was produced. Subsequently, when he secured bail in other proceedings, he has refused to honour the said settlement.

3. Subject complaint has been filed with regard to a cheque of Rs.50 lakhs. It is contended by the respondent that the said cheque was given as repayment of the advance given by the respondent for purchase of a property of the petitioner. It is submitted that neither the property was transferred nor the money was returned and the subject cheque in the sum of Rs.50 lakhs was issued by the petitioner to refund the advance paid by the respondent.

4. The petitioner was summoned by order dated 25.01.2016 to appear before the Court on 21.03.2016. On 21.03.2016 matter was put up for 10.08.2016. On 10.08.2016 the petitioner as well as the complainant had made a statement before the Court that parties had

settled their disputes and MOU dated 03.07.2016 had been executed. Copy of the MOU was produced before the Court. Respondent has filed the certified copy of the MOU which was filed before the Court on 10.08.2016. The MOU specifically records that petitioner had taken an advance of Rs.50 lakhs towards sale consideration and since the sale had not fructify, issued the subject cheque for repayment of the said amount of Rs.50 lakhs. As per the MOU the petitioner had agreed to refund the said amount by 10.08.2016.

5. On 10.08.2016, 15 days time was sought by the petitioner to make the payment of the said amount. On 31.08.2016 further one month was sought by the petitioner to make the payment of the said amount to the complainant, however, on 30.09.2016 petitioner stated before the Court that settlement had failed.

6. Thereafter the matter was adjourned to 20.12.2016, when notice was framed against the petitioner under Section 251 Cr.P.C. Petitioner was given an opportunity to make an application under Section 145(2) of the Negotiable Instruments Act. Matter was thereafter adjourned to 23.12.2017. On 23.12.2017 the Court noticed that said application was not filed. Matter was adjourned to 11.04.2017 where once again an application was not filed and NBWs were issued, returnable for 12.05.2017.

7. On 12.05.2017, an application for exemption was moved on behalf of the petitioner. On 27.05.2017 it was noticed by the Court

that the petitioner was in Judicial Custody. Accordingly, his production warrants were issued. Thereafter matter was adjourned to 30.05.2017, 05.06.2017, 04.07.2017.

8. On 04.07.2017 last opportunity was granted to the petitioner for leading defence evidence. Thereafter matter was adjourned to 25.07.2017 when Court was on leave and matter was thereafter adjourned to 23.08.2017, the day when the impugned order was passed.

9. Noticing the above facts and also the fact that several opportunities had already been availed of by the petitioner and no defence evidence has been led and even on the said date i.e. 23.08.2017, the Trial Court was constrained to pass the impugned order closing the right of the petitioner to lead any defence evidence.

10. From the order sheet of the court as noticed above, it is evidence that several opportunities have been availed of by the petitioner for leading defence evidence but no evidence has been led. Rather, the petitioner had even made a statement before the Trial Court that petitioner had settled with the respondent and filed on record the MOU dated 03.07.2016 and twice opportunity was availed to make payment in terms of the MOU. But, no payment has been forthcoming. The petitioner is clearly attempting the delay the proceedings.

11. Even, subsequent orders of the Trial Court, placed on record by the respondent, show that the petitioner has thereafter again failed to appear before the Court and proceedings under Section 82 have been initiated. Thus further delaying the proceedings.

12. I find no infirmity in the order passed by the Trial Court on 23.08.2017. In view of the facts and circumstances as noticed above, I am not inclined to interfere with the impugned order.

13. There is thus no merit in the petition. The petition is accordingly dismissed.

14. Order *Dasti* under the signatures of the Court Master.

AUGUST 16, 2018
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SANJEEV SACHDEVA, J