

§~4 & 34

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

+ CM(M) 752/2018 & CMs No.26905-26906/2018

BASANT INDIA INC

.... Petitioner

Through Ms. Stuti Gupta, Adv.

versus

KENYA AIRWAYS

..... Respondent

Through Mr. Nikhil Chawla, Adv.

&

CM(M) 786/2018 & CMs No.27913-27916/2018

KENYA AIRWAYS

..... Petitioner

Through Mr. Nikhil Chawla, Adv.

versus

BASANT INDIA INC

..... Respondent

Through Ms. Stuti Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

18.07.2018

%

Vide the CM(M) No.752/2018 the petitioner thereof i.e. the plaintiff in CS No.618533/2016 before the learned trial court of the learned ADJ, (Central-14), Tis Hazari Courts, Delhi assails the order dated 25.5.2018 by which the application under Section 151 CPC filed by the plaintiff of the said suit seeking a further opportunity to the plaintiff for summoning the witness was declined, it having been observed vide the order dated 16.4.2018

CM(M) 752/2018 & CM(M) 786/2018

page no. 1 of 3

2

that one single opportunity was granted to the plaintiff to lead plaintiff's evidence which has already been availed of by the petitioner/plaintiff, the application could not be allowed and the same was dismissed with cost of Rs.10,000/- to be deposited with Delhi Legal Services Authority.

Learned counsel for the respondent submits that there is no opposition to the prayer made by the petitioner, in the event of the prayer made by the respondent vide CM(M) No.786/2018 is allowed, assailing the very same impugned order dated 25.5.2018 whereby cross-examination of PW-2 to be conducted by the defendant to the said proceedings i.e. the petitioner in CM(M) No.786/2018 was declined and no opportunity was granted to the defendant of the said suit i.e. the petitioner in CM(M) No.786/2018 to conduct the cross-examination of PW-2 inasmuch as the affidavit of the said witness had been filed only on 25.5.2018 and there was no opportunity for the petitioner of CM(M)786/2018 i.e. the defendant to prepare to conduct the cross-examination.

Learned counsel for the plaintiff in CS No. 618533/2016 i.e. the petitioner of CM(M) No.786/2018 too does not oppose the prayer made by the defendant to CS 618533/2016 i.e. the petitioner of CM (M) 752/2018 seeking that the petition CM (M) 752/2018 be correspondingly allowed. Taking into account the submission made through the application under Section 151 CPC that had been filed before the learned trial court to enlarge the time of the plaintiff for summoning the concerned clerk from Registrar of Firms, Delhi Administration, Plot No.419, FIE, Patparganj Industrial Area, Delhi-110092, to bring the entire record with respect to plaintiff firm i.e. all the partnership deeds registered with the Registrar from time to time



and the Forms-A, B, C issued to the plaintiff firm with reasons explained as to why requisite steps could not be taken in time though an application had been filed for filing the PF twice, and taking into account the factum that the affidavit of PW-2 was supplied to the defendant i.e. the petitioner of CM(M) No.786/2018 only on the date of 25.5.2018 on which date itself the cross-examination of the PW-2 was declined, in the interest of justice it is considered appropriate to allow both the CM(M) No.752/2018 and CM(M) No.786/2018 filed by the plaintiff and defendant of CS No. 618533/2016 respectively and the impugned order dated 25.5.2018 is thus, set aside with direction that one single opportunity be granted to the defendant of CS No. 618533/2016 i.e. petitioner of CM(M) No.786/2018 to conduct the cross-examination of PW-2 Mayank Gupta to be produced by the plaintiff on the said date without default for which date steps be also taken in time by the plaintiff of the said suit for production of the witness from the Registrar of Firms, Delhi Administration as prayed vide application under Section 151 CPC filed by the plaintiff before the learned trial court on 25.5.2018. No adjournment be sought by the defendant for cross-examination of the said witness as well as of PW-2.

The petitions CM(M) 752/2018 & CM(M) 786/2018 and the accompanying applications are disposed of accordingly.


ANU MALHOTRA, J

JULY 18, 2018

aj

CM(M) 752/2018 & CM(M) 786/2018

page no. 3 of 3