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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 923/2018 & CM APPL. 35070/2018**
M/S UNIVERSAL FUTURE SHIPPING & LOGISTIC & ORS
..... Petitioners
Through: Ms. Aditi Gupta, Adv.

versus

SURENDER KUMAR AGARWAL Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **29.08.2018**

The matter is listed for 27.10.2018 and taken up on CM APPL. 35070/2018, an application filed on behalf of the petitioner seeking an early hearing submitting *inter alia* to the effect that the proceedings in the instant case are listed before the learned trial Court for tomorrow. In view thereof, the application for preponement of the date of hearing is allowed and the matter has been taken up for consideration.

Submissions have been made on behalf of the petitioner. The petitioner assails the impugned order dated 23.05.2018 of the learned trial Court of the ADJ-05, West, THC, Delhi whereby the application filed on behalf of the defendants seeking to lead the evidence was declined taking into account the factum that the plaintiff's evidence was closed on 01.12.2016 and the matter was adjourned for 16.02.2017 for defendants' evidence and on 16.02.2017, the defendants failed to lead evidence and the matter was adjourned for

15.03.2017 and on 15.03.2017 also, the defendants failed to lead evidence in support of the case and the matter was adjourned for 01.05.2017 and on 01.05.2017 there was no DW present and a cost of Rs.5,000/- was imposed on the defendants and a last opportunity was granted to defendants for leading the evidence with the matter being adjourned for 26.05.2017 and on 26.05.2017, DW-1 was examined and his cross examination was partly conducted and remaining cross examination was deferred for 29.08.2017 and on 26.07.2017, the affidavit of DW-2 was filed and the adjournment was taken up by defendants and thus the matter was adjourned for 31.08.2017. On 29.08.2017, none appeared on behalf of the defendants, the evidence of DW-1 was closed and the matter was adjourned for 31.08.2017. As per the impugned order in the interest of justice, DW-1 was recalled for further cross examination and after cross examination, DW-1 was discharged and the matter was adjourned for 13.09.2017 for evidence of DW-2 and on 13.09.2017, DW-2 was not present and a cost of Rs.10,000/- was imposed on defendants and the matter was adjourned for 06.11.2017 and on 06.11.2017, DW-2 was not produced, the matter was adjourned for 20.12.2017 and on 20.12.2017, none appeared for the defendants and a cost of Rs.10,000/- was not paid and thus the testimony of DW-2 and the defendant's evidence was closed and an application was moved on 24.02.2018 on behalf of the defendants for seeking summoning of witnesses submitting to the effect that they be allowed to summon the witness from the Custom Department. It was submitted on behalf of the petitioner as also

submitted before the learned trial Court on the date 23.05.2018 that DW-2 was not in a position to appear before the learned trial Court due to an accident and injuries. The issues in the instant case are stated to have been framed in the year 2012 as has also been observed vide the impugned order, the list of witnesses was not filed within a period of 15 days from the date of settlement of issues and as rightly observed by the learned trial Court several opportunities had been granted to defendants to lead/ conclude the evidence on defence.

Reliance has been placed on behalf of the petitioner on the verdict of this Court in ***Om Prakash Vs. Mohinderjit Singh Narula*** in Civil R. No.722/1977 and on the verdict of High Court of Rajasthan in ***Prabhu Dayal Vs Girraj Kishore 1963 LawSuit(Raj) 29***, on the verdict of Hon'ble Supreme Court in ***Lalitha J. Rai Vs Aithappa Rai(1995) 4 SCC 244***, on the verdict of High Court of Karnatak in ***Smt. Yasodamma and Anr. Vs. Inderchand Vimalchand Jain and Anr. AIR 1974 Karnatak 100 (V 61 C 33)*** to contend that in the interest of justice, the Court ought to be liberal in granting the prayer made by the petitioner in seeking to produce the witness inasmuch as even though the list of witnessess had not been filed within a period of 15 days of the framing of the issues i.e. the settlement of issues nevertheless the witness could have been produced. Undoubtedly, the witness could have been produced if the witness was present even though the list of witness had not been filed. It is submitted on behalf of the petitioner that the witness being a witness from the Custom's Department could not have been present without the process of the

Court. The petitioner i.e. the defendant to the suit cannot be oblivious to what they wanted to produce in defendant's evidence and would have known that they wanted to produce a witness from the custom's authorities.

In the facts and circumstances of the case in the instant case, reliance placed on behalf of the petitioner on the catena of verdicts referred to hereinabove does not assist the petitioner.

The petition and the accompanying application are declined.

The date 27.10.2018 is cancelled.

ANU MALHOTRA, J

AUGUST 29, 2018

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