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

+ CRL.M.C. 2688/2015 & CrI.M.A. No. 9634/2015

M/S EASY TRIP PLANNERS PVT. LTD. Petitioner
Through Mr. Manish Aggarwal, Advocate

versus

M/S ROMA TOUR & TRAVELS Respondent
Through Mr. S.K. Chawla, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **08.01.2018**

Vide the present petition the petitioners assails the impugned orders dated 28.2.2015 and 20.3.2015 of the learned trial court in CC No.NI-207/14/13.

Vide the impugned order dated 28.2.2015, the application under Section 311 Cr.P.C. filed by the complainant i.e. the present petitioner herein seeking summoning afresh of Ms Shilpi Kakkar who has previously been examined as CW-1, on the ground that the documents which were necessary had not been put to her and one of the essential witnesses to be examined i.e. director of the complainant company i.e. Nishant Pittie who was the main witness had not been examined and that the said witness Nishant Pittie be allowed to be examined, was declined and it had been observed to the effect that the complainant had moved the application to fill loop holes in the complainant evidence only after the accused sought to summon the witness from complainant company and that ample opportunities had been granted to the complainant to lead complainant's evidence and that the complainant voluntarily opted to close its evidence and proceeded

to the next stage and that the complainant cannot be allowed to take the plea of its callousness and cannot set the clock back by taking advantage of its own fault.

Vide the impugned order dated 20.3.2015 in the same case, the learned trial court allowed the application under Section 311 Cr.P.C. filed by the accused i.e. the respondent to the present petition seeking re-summoning of the authorized representative of the complainant Ms. Shilpi Kakkar already examined as CW-1 and qua the prayer made by the accused i.e. the respondent to the present petition seeking summoning of the complainant witness afresh for cross-examination by the accused so that all relevant documents relied upon by the accused in his defence can be confronted. Furthermore, as regards the witness Amit Kishore it was observed by the learned trial court to the effect that as documents relied upon by the respondent i.e. the respondent to the present petition had been signed by the alleged Sales Head of the complainant, Shri Amit Kishore the said Shri Amit Kishore was directed to be summoned as a court witness.

During the course of arguments addressed on behalf of the petitioner it has been submitted that Shilpi Kakkar has since left the services of the petitioner company and that the said aspect was also detailed in para 8 of the application dated 13.9.2013 filed by the complainant i.e. the present petitioner before the learned trial court vide which application, the petitioner under Section 311 Cr.P.C. has sought examination of Nishant Pittie, the Director of the complainant company as witness.

At the outset, as regards the prayer that has been made on

behalf of the petitioner seeking setting the aside of the impugned order dated 20.3.2015 for summoning of Shri Amit Kishore qua whom it has been submitted on behalf of the petitioner that he can be produced by the accused i.e. the respondent as a defence witness, it is essential to observe that vide the said impugned order dated 20.3.2015 Shri Amit Kishore has been summoned as a court witness, and thus the prayer made by the petitioner seeking setting aside of the impugned order dated 20.3.2015 for summoning Shri Amit Kishore cannot be allowed.

On behalf of the respondent it has been submitted that all that the respondent seeks is that the concerned officer from the petitioner's company is produced so that the petitioner can put forth all documents necessary to be confronted to the witnesses of the petitioner and simultaneously it is prayed on behalf of the respondent that the testimony already recorded of CW-1 be continued to be on the record.

As regards the submission that the testimony of the witness already recorded i.e. CW-1 Shilpi Kakkar continues on the record, it is essential to observe that the same has to be on the record and shall be considered by the learned trial court to continue to remain on record and shall be taken into consideration at the stage of adjudication.

Taking into account the fact however, that the petitioner has submitted that Ms. Shilpi Kakkar has left the services of the petitioner company as was also averred by the petitioner in its application under Section 311 Cr.P.C. dated 13.9.2013 filed before the learned trial

court and the submissions also made on behalf of the petitioner that in fact the legal notice qua the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 was issued on the direction of Mr. Nishant Pittie Director of the petitioner company and not on the direction of Ms. Shilpi Kakkar as testified by her in her testimony dated 15.1.2013 to the effect that the legal notice Ex.CW1/C in question was issued but not under her direct instructions but on behalf of the company, it is considered appropriate and essential in the interest of justice that Shri Nishant Pittie, Director of the petitioner company, is allowed to be summoned by the petitioner for examination and shall also be thereafter cross-examined by the accused.

The impugned order dated 20.3.2015 of the learned trial court is modified only to the extent that in place of Shilpi Kakkar directed to be summoned vide order dated 20.3.2015 qua the application filed by the respondent it shall be the witness Shri Nishant Pittie who shall be allowed to be cross examined on behalf of the accused/respondent in terms of the order dated 20.3.2015.

Further, the petitioner is also permitted to produce Nishant Pittie as witness of the petitioner, and the impugned order dated 28.2.2015 of the learned M.M. Court is thus set aside in the circumstances of the case.

The petition is disposed of accordingly.

Trial court record be sent back immediately.

ANU MALHOTRA, J

JANUARY 08, 2018/aj