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

+ **CM(M) 1280/2018**

MIRIC BIOTECH LIMITED

..... Petitioner

Through: Mr.Himanshu Upadhyay, Advocate.

versus

JYOTSNA DUBE @ JYOTSNA GANDHI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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23.10.2018

CM No.43999/2018 (for exemption)

1. Allowed, subject to all just exceptions.

CM(M) 1280/2018 & CM No.44000/2018 (for stay)

2. In this petition filed under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908, the petitioner has challenged the order dated 08.10.2018 passed by the learned Additional District Judge, South-West District, Pilot Court, Dwarka, New Delhi (ADJ) in Civil Suit No. 348/2018 titled 'Jyotsna Dubey @ Jyotsna Gandhi Vs. Miric Biotech Ltd.' By the impugned order the application of the petitioner to recall the orders dated 04.08.2018 and 22.09.2018 was dismissed.

3. On 04.08.2018, the plaintiff examined herself as PW1 and was present for her cross-examination, however, the learned counsel for the

petitioner submitted that he would cross-examine PW1 only when the reply/written statement in the Counter Claim was filed by the plaintiff. Ld.ADJ noticed that a decree of possession had already been passed and the matter was fixed for evidence on *mesne* profits and the petitioner was claiming a sum of Rs.4,70,500/- in the counter claim, allegedly spent on renovation of the suit property. The Court observed that relief claimed by the petitioner has no bearing on the issue of *mesne* profits. The Court also took note of the fact that PW1 was to leave for USA on 06.08.2018 for three years in connection with her job. In the circumstances, the Ld.ADJ declined the request of the petitioner. After closing the petitioner's evidence the matter was adjourned to 29.08.2018 for reply and arguments on the application of the plaintiff under Order XXXIX Rule 10 read with Section 151 CPC and for petitioner's evidence (PE).

4. On 29.08.2018, on behalf of the petitioner a new counsel filed his *vakalatnama* and on his request the matter was adjourned for the same purpose for 15.09.2018. However, on the adjourned date of hearing, one proxy counsel for the petitioner again sought an adjournment on the ground that the counsel is unwell. Since the adjournment was sought on personal ground of the counsel, the Ld.ADJ granted last opportunity for 22.09.2018. However, on 22.09.2018, in the first call one Authorized Representative (AR) of the petitioner had appeared and sought a Passover for 12.00 Noon for want of counsel. The matter was taken up again at 12.31 PM but neither the AR of the petitioner nor its counsel was present and the petitioner's evidence was closed. The court noticed that on 07.09.2018, this court with the consent of the parties has disposed of the RFA of the petitioner against

the judgment/order and decree dated 04.07.2018 for possession and the petitioner has undertaken to clear the arrears of rent within 30 days as well as electricity and water charges and TDS and the petitioner was directed to file affidavit of undertaking before the Trial Court within two weeks. The Ld.ADJ adjourned the case to 01.10.2018 for appearance of the defendant to apprise the court whether the undertaking has been filed within the stipulated time failing which the arguments shall be addressed on the application under Order XXXIX Rule 10A CPC as well as for Final Arguments.

5. While disposing of the application filed by the petitioner on 06.10.2018 under Section 151 CPC for recalling of the order dated 04.08.2018 and 22.09.2018, the learned ADJ found that the plaintiff has filed an affidavit of PW1 on 16.07.2018 and the learned Counsel for the petitioner was given liberty to collect the copy of the affidavit. The matter was adjourned to 24.07.2018 for cross-examination of PW1. However, on the request of the learned counsel for the petitioner/defendant, the matter was adjourned to 04.08.2018. There was no plausible reason for the petitioner to insist for filing of reply by the respondent/plaintiff to his counter claim which has no bearing on the issue of *mesne* profit.

6. It appears that the petitioner has only been gaining time to prolong the matter, particularly when he has suffered a decree of possession on 04.07.2018 passed by the Ld.ADJ and RFA against the said judgment and decree has been disposed of by this court on 07.09.2018 with the consent of the parties.

7. I do not find any merit in the petition. The same is dismissed with no order as to costs.

8. In view of the above, the application, being CM No. 44000/2018, also stands dismissed.

VINOD GOEL, J.

OCTOBER 23, 2018
"shailendra"