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

+ CM(M) 1593/2018 & CM APPLs. No. 54363-54371/2018

NARESH KUMAR

..... Petitioner

Through Mr. H.K. Dhariwal, Adv.

versus

PARVEEN GUPTA

..... Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **21.12.2018**

CM APPL. No. 54363 /2018

This application is allowed subject to all just exceptions.

CM APPL. No. 54371/2018

This is an application for condonation of delay in filing the petition without even mentioning the number of days delay which is to be condoned and which is now stated to be a week's delay.

In the interest of justice, the delay in filing the petition is condoned.

Application stands disposed of.

CM (M) No. 1593/2018

The petitioner assails the impugned order dated 8.2.2018 of the learned ADJ-02 (East) in CS No. 3019/2016 whereby the right of

cross-examination of PW-1 of the defendant i.e. the present petitioner was declined.

A perusal of the impugned order indicates that the matter was fixed for the testimony of the plaintiff on 12.4.2017 when the plaintiff was examined-in-chief and matter was transferred from the court of District Judge (East) to the court of ADJ-02 (East), KKD for next date i.e. 9.6.2017 whereafter it was adjourned to 1.7.2017 on which date a request was made by the counsel for the petitioner for an adjournment which was allowed whereafter on 3.10.2017 the Bar was on strike and the matter was adjourned to 19.1.2018 on which date a request was made on behalf of the defendant on the ground that his counsel was not available and the matter was fixed for 8.2.2018. Even on 8.2.2018 an adjournment was once again sought on the same ground despite the factum that last opportunity had been granted. The learned trial court taking into account the Administrative Order No.3174//DHC/Gaz/G-7/Misc/2017 of this Court dated 3.7.2017 to the effect that more than three opportunities could not be granted for a particular purpose and the fact that the defendant had already exhausted the three opportunities, the trial court closed the right of the defendant to examine PW-1.

Apparently there is no infirmity in the impugned order dated 8.2.2018.

A submission is made on behalf of the petitioner further that apart from the aforesaid impugned order the petitioner has also challenged the orders dated 17.8.2018 and 20.11.2018 of the learned trial court inasmuch as it had been submitted on 17.8.2018 on behalf

of the petitioner herein that an application seeking review of the order dated 8.2.2018 had been filed which application was declined . The matter was adjourned for defence evidence for 20.11.2018. Vide order dated 17.8.2018 a direction was made that an advance copy of the affidavit in evidence on behalf of the defendant be supplied to the counsel for the plaintiff a week before the next date so that defendant's witness could be cross-examined. Proceedings dated 20.11.2018 indicate that on the said date it was submitted by the counsel for the defendant that he had been recently engaged and could not inspect the files and intended to approach this Court against the order dated 17.8.2018 and that the defendant is not available and no affidavit in evidence could be filed by him for the reason of his fresh engagement. The said prayer was opposed on behalf of the plaintiff. It having been held by the learned trial court that the matter was listed on 17.8.2018 and there was three month's time for the defendant to engage a new counsel or to challenge the order and that the matter was listed for defence evidence on 2.5.2018, then on 7.8.2018 and then on 20.11.2018 and thus in view of the three opportunities in terms of the Order XVII CPC and the Administrative Order dated 3.7.2017 of this Court having been exhausted and the conduct of the defendant, there was no ground for any further opportunity to be granted to the defendant to lead evidence.

Apparently, even in relation to the aspect of closure of the defendant's evidence as well taking into account the factum that opportunities for the defendant's evidence on 2.5.2018, 7.8.2018 and 20.11.2018 had not been availed by the petitioner herein, there was no

infirmity whatsoever in the impugned order.

The petition and the accompanying application are dismissed.

ANU MALHOTRA, J

DECEMBER 21, 2018

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