

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1403/2017 & CM APPL. 44964/2017**

**M/S AMBIENCE DEVELOPERS & INFRASTRUCTURE PVT
LTD & ORS** Petitioners

Through: Mr. P.K. Agrawal, Ms. Mercy Husain
& Ms. Tanmay Sharma, Advocates.

versus

SANJAY RUSTAGI Respondent

Through: Mr. S.K. Mathur, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **12.07.2018**

Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 29.11.2017 of the learned ADJ-02, South Saket whereby the right of defendant to lead the defendant evidence was closed with the matter having been re-notified for final arguments, it having been observed to the effect that vide the order prior to the date 29.11.2017. i.e., the order dated 16.10.2017, a final opportunity had been granted to the defendants to complete their evidence with it having been made clear that irrespective of the presence or non-presence of the respective counsel and of the witnesses, no further opportunity would be granted to the defendants to lead evidence or to the plaintiff to cross examine the witness.

It is indicated through the impugned order dated 29.11.2017

itself that a submission had been made on behalf of the defendant by the learned counsel that the defendant was unwell and suffering from fever.

It has been submitted on behalf of the petitioner/defendant that the counsel for the defendant was present on each and every date of hearing before the learned Trial Court which is indicated through the copies of the proceedings placed on record dated 02.12.2016, 13.07.2017, 04.09.2017 and 16.10.2017.

On behalf of the respondent through the petition, it has been submitted by the learned counsel for the respondent that there have been delaying tactics repeatedly adopted on behalf of the petitioner but nevertheless, in the event of the production of the witness, DW-2 Raj Singh expeditiously, i.e., tomorrow when the matter is listed for final arguments, the respondent would not oppose the prayer.

Time of a week is however sought on behalf of the petitioner/defendant to ensure the presence of the witness, DW-2 Raj Singh.

In the interest of justice, it is considered appropriate and expedient for a complete adjudication of the *lis* pending before the learned Trial Court, i.e., CS 5624/16 before the ADJ-02, South Saket that one final opportunity is granted to the defendant, i.e., the petitioner herein to produce the witness, DW-2 before the learned Trial Court on the date 26.07.2018, on which date the defendant shall ensure the presence of the said witness for the purpose of defendant evidence and also cross-examination of the said witness and no further opportunity would be granted by the learned Trial Court for

the presence of the aforesaid witness, i.e., DW-2 Raj Singh at least for the examination in chief.

With these observations, the present petition, i.e., CM(M) 1403/2017 is disposed of and all the other miscellaneous applications are also disposed of.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 12, 2018/NC