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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 425/2019 & CM APPL No.21525/2019**
M/S NETSYS NETWORK PVT LTD & ANR

..... Appellants

Through : Mr.Bhupesh Narula and Mr.Rinku
Narula, Advs.

versus

M/S B E CONTRACTS (P) LTD

..... Respondent

Through : Mr.Anant Kr.Hajelay, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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06.11.2019

This appeal is against the judgment dated 30.08.2018 passed by learned ADJ in CS No.9202/16 whereby the evidence of the plaintiff/appellant was closed and the suit for recovery was dismissed. Additional cost of ₹ 20,000/- was also imposed, out of which ₹ 10,000/- was to be fixed deposited with the Chief Minister's Distress Relief Fund and ₹ 10,000/- was payable to the defendant.

The impugned order notes as under :

3. From the previous order sheet, it is clear that the plaintiff as well as his counsel adopted a very casual approach towards proceedings of the court. Earlier also, the evidence of the plaintiff was closed after giving three opportunities. On filing of an application earlier, the said order was recalled vide order dated 11.10.2017 and thereafter, the matter was fixed for PE and a Local Commissioner was also appointed for recording of evidence but the plaintiff failed to examine any of the witnesses before the Local Commissioner also.

4. In the present application, it is disclosed that the counsel for the plaintiff was not available on the first date and on the second date, he sent a junior counsel and on third date, he was not available till 5.00 PM. It clearly shows that despite giving ample opportunities, the plaintiff

failed to lead any evidence before the Local Commissioner also. If the counsel for the plaintiff was so much busy, he should have direct some competent advocate to handle the case on behalf of the plaintiff. Accordingly, I am of the considered opinion that no sufficient grounds has been shown in the application to recall the order of closing of evidence. Accordingly, the present application is dismissed.

5. As there is no evidence on record, plaintiff failed to prove and substantiate the claims/allegations made in the plaint. Consequently, the suit of the plaintiff is also dismissed. Cost of the suit is awarded to the defendant. A further exemplary cost of Rs. 20,000 is also imposed on the plaintiff for wasting precious time of the court and causing harassment to the defendant, out of which Rs. 10,000 to be paid to the defendant and Rs.10,000 to be deposited in the A/c No. 67319948232, A/c Name: Chief Minister's Distress Relief Fund, Branch: City Branch Thiruvananthapuram, IFSC Code: SBIN0070028' on account of recent flood tragedy in Kerala within 30 days.

Learned counsel for the appellants says the appellant could not appear on 30.08.2018 as was out of station in village Shahpur, Uttar Pradesh, on account of death of his father-in-law.

Considering the submissions and previous conduct of the appellant only one opportunity for recording of his entire evidence is given to the appellant on payment of further cost of ₹ 30,000/- to the defendant.

In the circumstances, the judgment/decreed dated 30.08.2018 is set aside. The appellant shall now appear before the learned trial court on 5th December, 2019 on which date the learned Judge shall fix a date for recording of the evidence of the plaintiff/appellant.

The appeal stands disposed of in terms of above.

Order dasti.

YOGESH KHANNA, J.

NOVEMBER 06, 2019

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