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

Date of decision: 30th October, 2019

+ **CM (M) 1555/2019**

VEENA GUPTA

..... Petitioner

Through: Ms. Neha Garg, Advocate.
(M:9911536363)

versus

BAJAJ ALLIANZ LIFE INSURANCE CO. LTD. Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 47107/2019 (exemption)

1. Allowed, subject to all just exceptions. The application is disposed of.

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2. The Petitioner challenges the order dated 17th September, 2019 by which, according to ld. counsel for the Petitioner, costs of Rs.4,000/- has been imposed upon the Petitioner/Plaintiff (*hereinafter the 'Plaintiff'*) without any basis or ground. She submits that on the said date, there was no default by the Plaintiff, who had in fact, entered appearance in the morning and the process server's statement was also recorded. She further submits that the matter was put up at 2:30 PM for passing of appropriate orders and the impugned order was passed. However, the counsel for the Plaintiff appeared at 2:45 PM and then, he was appraised of the order. Thus, there was no reason assigned for imposing the costs.

3. A perusal of the order sheets in the suit shows that a fresh suit for

recovery was received by the Court on 15th December, 2018 and the summons were issued for settlement of issues. The process server was directed to appear for recording of the statement as the service report showed that the Defendant had been served and there was no appearance. Since the process server did not appear, on 5th July, 2019, bailable warrants were issued against the process server. Then on 17th September, 2019 in the morning the statement of the process server was recorded at which time Ms. Deepa Maurya's appearance was recorded as the proxy counsel for the Plaintiff. After recording the statement of the process server, the matter was put up at 2:30 PM and thereafter the impugned order was passed, which reads as under:

"CS No. 1658/2018

Veena Gupta Vs. Bajaj Allianz Life Insurance

17.09.2019

Present: Ms. Deepa Maurya. Ld. Proxy
counsel for plaintiff.

None for defendant.

Sh. Sandeep Kumar, Process Server is also
present.

Perused the file.

Statement of the process server has been
recorded separately in respect of service of
defendant.

Be awaited. Put up at 02:30 p.m.

(AjayNagar)

Commercial Civil Judge (W)

THC/Delhi.17.09.19.

At 2:30 p.m.

Present: None despite repeated calls.

Perused the file which shows that none
appeared on behalf of the defendant despite service
of summons. Statement of the process server has

*already been recorded in the morning session in respect to service. As such, **the defendant is proceeded Ex-parte.***

It was the duty of the plaintiff to appear in the post lunch session also but none has appeared on behalf of the plaintiff. Hence, a costs of Rs. 4,000/- is imposed upon the plaintiff to be deposited with the DLSA and receipt thereof be filed on the next date of hearing.

Put up for ex-parte PE on 19.10.2019.”

4. Upon a query by the Court, ld. counsel clarifies that Ms. Deepa Maurya was a junior counsel of Mr. O. P. Gupta, Advocate, who was ready to assist the Court and was aware of the case.

5. A perusal of the order sheets shows that the Defendant, after service, has been proceeded *ex-parte* and on the date when the matter was taken up i.e. on 17th September, 2019, the counsel for the Plaintiff had put in appearance. Thus, the reasons for imposing of Rs.4,000/- as costs is not decipherable from the order.

6. Further, it is noticed that in the District Courts, junior counsels, who appear from the chambers of the counsels who file vakalatnamas, are reflected as “Proxy Counsel”. From this, it is not clear as to whether the junior counsels, who appear, are ready to assist the Court or not. The term “Proxy Counsel” ought to be used only when the counsels, who appear, are not able to assist the Court in the matter or are merely seeking an adjournment. Junior counsels, who work in the filing counsel’s chamber, and are aware of the facts and assist the court, ought not to be described as proxy counsels. In the practice of law, courts have a duty to encourage junior counsels who may not have filed vakalatnamas and ought to hear

them if they are ready to assist the court. They cannot be simply treated as proxy counsels, as such a treatment, is not only discouraging to such junior advocates but also creates delays in the dispensation of justice. When junior counsels appearing before the court are prepared and are ready to assist, they ought to be heard and effective orders can be passed. Filing counsel or the counsel in whose favour the client has given the *vakalatnama* ought to encourage junior advocates and counsels to make submissions and argue matters. Of course, there is a word of caution. There are some orders such as withdrawal of a suit, recordal of settlement in a suit, etc., which essentially require the filing counsel to be present. Except in such situations, court proceedings can continue with the appearance of junior counsels so long as they have the necessary express/implied permission to make submissions from their seniors. When junior counsels working in the chambers of filing counsels appear and assist the court, instead of describing them as 'proxy counsels' alternative terminology such as “____, ***Advocate appearing for*** ***Ld. Counsel for the Plaintiff/Defendant***” can be adopted. Only in case a junior or other counsel who is completely unrelated and/or unprepared in the case, the terminology of 'proxy counsel' can to be used. This would also enable junior counsels to ensure that they are not merely taking passovers and adjournments but also get prepared in the matters and are ready to make submissions.

7. In the present case, it is also submitted by ld. counsel for the Plaintiff that after the passing of the impugned order, on 19th October, 2019 again, the matter was listed in the morning. At 11:34 AM, the order sheet records that the previous costs are not deposited. Again at 12:32 PM it is recorded that the previous costs are not deposited. The same is repeated at 2:35 PM

and finally, Rs.3,000/- is again directed to be deposited as costs. She submits that this was despite the fact that the Court was informed about the filing of the present petition.

8. The order sheets placed on record as also the order dated 19th October, 2019 do not show any valid reason for imposition of costs in this manner when the junior counsel was present. The junior counsel also got the statement of the process server recorded. Thereafter the Defendant has been proceeded *ex-parte* and now the matter is to proceed with the Plaintiff's evidence, if required, in accordance with law.

9. Having regard to the facts and circumstances set out above, the appearance of the junior counsel for the Plaintiff is considered sufficient appearance on behalf of the Plaintiff. The costs imposed by the impugned order are, accordingly, set aside.

10. The petition is allowed. Copy of this order be sent to the Court of Commercial Civil Judge (W), Tis Hazari Courts, Delhi.

PRATHIBA M. SINGH
JUDGE

OCTOBER 30, 2019/dk