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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 88/2019 & CM APPL. 2744/2019**

VINOD KUMAR CHUGH

..... Petitioner

Through: Mr. Sanjeev Sahay, Adv.

versus

MAHENDRA KUMAR GUPTA

..... Respondent

Through: Mr. Rohit Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **22.01.2019**

The respondent has not been served. As per the note the process fee is indicated to have not been filed.

On behalf of the petitioner however has been submitted an affidavit *inter alia* to contend that efforts were made for the service of the respondent. It has also been submitted by the learned counsel for the petitioner that the learned counsel for the respondent Mr. Rohit Kumar has been served through *e mail*.

Put up at 2:15 p.m.

ANU MALHOTRA, J

JANUARY 22, 2019/sv

At this stage

The petitioner assails the impugned order dated 03.01.2019 and

14.01.2019 of the learned ARC, South in Eviction Petition No.6157/2016. Vide order dated 03.01.2019, the matter has been fixed for 23.01.2019 for clarification, if any/orders and vide order dated 14.01.2019, the application filed by the applicant/petitioner herein arrayed as respondent to the said eviction petition seeking time to make oral arguments,- was declined taking into account that there was only a proxy counsel present for the respondent i.e. the present petitioner on 03.01.2019 when arguments were addressed on behalf of the petitioner of the eviction petition and an opportunity was granted to the respondent to the said eviction petition to file the written arguments within a week along with copies of citations, if any. Vide proceedings dated 14.01.2019, in view of the absence of the learned counsel for the petitioner herein i.e. the respondent to the eviction petition to make oral submissions on 03.01.2019, the prayer seeking to submit oral arguments, was declined.

During the course of submissions that were made in relation to the present petition and as submitted through the petition, reliance is sought to be placed on the provisions of Order XVIII Rule 2 (3a) of the CPC which provide to the effect:

“Any party may address ‘oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.’”

with *inter alia* reliance having been placed on behalf of the petitioner on the verdict of the Hon’ble High Court of Bombay in ***Rukhana***

Associates, Mumbai Vs. E-Square Leisure Pvt. Ltd., Mumbai 2010

(5) *Mh.LJ 202* with observations therein in para-6 to the effect:

“Further, Order XX Rule 1 also envisages that the Court (read Judge), after the case has been heard, shall pronounce Judgment in the manner provided therein. Notably, Rule 2 of Order XX is the only exception to the Rule that the Judge who has heard the oral arguments should himself pronounce the Judgment. In other words, the Judgment can be pronounced only by the Judge, who has heard the oral arguments. In that, Rule 2 envisages that a Judge shall pronounce a judgment written, but not pronounced, by his predecessor. That is not the case on hand. Admittedly, in the present case the Judge who had heard the oral arguments was transferred before pronouncing the Judgment or for that matter writing the Judgment. In such a situation, the new Judge has had no option but to hear the oral arguments afresh and only then pronounce the Judgment. The fact that the parties have already filed written submissions or gist of oral arguments advanced before the predecessor Judge, is of no avail. In as much as, submission of written arguments cannot supplant the requirement of oral arguments and cannot extricate or dispense with the same. The provision pressed into service by the Counsel for the respondent by no stretch of imagination dispenses with the requirement of oral arguments. We think it apposite to advert to the said provision, namely, Order XVIII Rule 2(3A), which reads thus:

“(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.”

This provision has come into force after the amendment of 2002. Going by the plain language of this provision, there is nothing to suggest that the process of oral arguments is completely dispensed with. On the other hand, filing of written

arguments is not mandatory and is subject to such order to be passed by the Court. In other words, the provision is an enabling provision authorizing the Court to issue direction to the parties to file written arguments in support of their case. That, however, is in addition to the oral arguments already advanced or to be advanced in the said case. If such written arguments in support of the case is filed by the parties, the same would form part of the record of the case. Even so, it would not dispense with the requirement of oral arguments to be advanced before the Judge who is expected to pronounce the Judgment. The word "may" in the opening part of this provision does not mean that oral arguments are optional. We cannot be oblivious to the other provisions referred to hitherto which makes it mandatory to hear the oral arguments before pronouncement of the Judgment by the Judge concerned. At the same time, the expression "shall" occurring therein is intended to make "filing of the written arguments before the conclusion of the oral arguments" mandatory, and subject to the permission of the Court. Suffice it to observe that the oral arguments are indispensable."

to submit and contend that it has been observed therein that oral arguments are indispensable in terms of Order XVIII Rule 2 (3a) of the CPC and that the word 'may' in the opening portion of the provision does not mean that oral arguments are optional.

On a consideration of the submissions made, in the interest of justice, one single final opportunity is granted to the petitioner to make oral submissions in the Eviction Petition No.6157/2016 on the date 23.01.2019 at 2:30 pm before the learned ARC, South. No further opportunity beyond the same shall be granted to the petitioner herein to submit oral arguments. The impugned orders dated 03.01.2019 and 14.01.2019 of the learned ARC, South in Eviction

Petition No.6157/2016 are modified accordingly.

The petition is disposed of accordingly.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 22, 2019/vm