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

+ **FAO(OS) 28/2019**

PRABHATAM ADVERTISING PVT LTD Appellant
Through: **Mr.Sunil Choudhary, Adv.**

Versus

DELHI TRANSPORTS CORPORATION Respondent
Through: **Mrs.Avnish Ahlawat, Standing**
Counsel with Mr.Nitesh Kumar Singh, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
05.02.2019

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C.M.No.5458/2019 (exemptions)

Allowed, subject to all just exceptions.

FAO(OS)28/2019 & C.M.No.5457/2019 (stay)

1. Challenging the orders dated 14th August, 2018 and 18th September, 2018 passed by the Joint Registrar in Civil Suit (OS) No.3363/2015 and confirmation of the same by the learned Single Judge vide order dated 20th December, 2018 by which the learned Single Judge has rejected the chamber appeal, this appeal has been filed by the appellant under Section 10 of the Delhi High Court (Original Side) Rules, 2018.
2. By the impugned order, the right of the defendant / appellant herein to lead evidence has been closed and on payment of Rs.5,00,000/- (Rupees

Five Lacs) as costs, the appellant has been permitted to cross-examine the witnesses of the plaintiff. Even though the learned counsel for the appellant, by taking us through various proceedings in the original civil suit pending before the learned Single Judge and orders passed by the learned Joint Registrar, tried to demonstrate that the appellant was not trying to delay the proceedings and in closing the right of the appellant to lead evidence and by imposing the cost of Rs.5 lacs for the purpose of cross-examining the plaintiff's witnesses, a material irregularity and error has been committed. He further submitted that the order has been passed without taking note of the fact that on the very first date for recording of evidence by the defendant, due to absence of the appellant's counsel, the right of the defendant/appellant herein to file its evidence has been taken away.

3. Having heard the learned counsel for the parties at length and on going through the detailed order passed by the learned Single Judge, we find that the learned Single Judge has gone through the proceedings held before the Joint Registrar on 14th August, 2018, 18th September, 2018 and has come to the conclusion that the appellant, on one pretext or the other, was trying to get the matter adjourned/delayed and even after a costs of Rs.50,000/- was imposed upon him vide order passed on 3rd May, 2018, was willing to get the matter adjourned. In fact, after the issues were framed on 25th August, 2017, the finding recorded is that the appellant/defendant has either taken adjournment or did not even appear before the Court or the learned Joint Registrar. He even did not pay court fee on the counter claim raised by him and the finding recorded in detail, after analysing various aspects of the matter, is that the appellant who is defendant in the suit was only interested in prolonging the litigation which is for the recovery of Rs.2,81,37,291/-

initiated by the respondent/DTC against the appellant and even after payment of Rs.50,000/- costs, the only intention of the appellant was to somehow delay the proceedings. It was also recorded that adjournment was taken on 14th August, 2018 on the ground that the counsel was not available due to illness but no medical certificate or evidence in support thereof was filed.

4. Taking note of the totality of the circumstances, the learned Single Judge has closed the right of the appellant to lead evidence and permitted him to cross-examine the plaintiff's witnesses, who have been recalled for cross-examination, on payment of Rs.5,00,000/- as costs.

5. As far as the closing of the right of the appellant to lead evidence is concerned, we find that there are cogent reasons and justifications given both by the Joint Registrar and the learned Single Judge and we see no reason to interfere into the same. However, as far as payment of costs of Rs.5,00,000/- for the purpose of cross-examining the plaintiff's witnesses is concerned, in the facts and circumstances of the case, we deem it appropriate to reduce the quantum of costs of Rs.5,00,000/- to Rs.2,00,000/- to be paid by the appellant within a period of two weeks from today.

6. We are informed that the matter is listed before the Joint Registrar on 6th February, 2019, on the appellant filing an undertaking before the Joint Registrar that he shall pay a costs of Rs.2,00,000/- within two weeks from today, the Joint Registrar shall permit the appellant to cross-examine the plaintiff's witnesses.

7. With the aforesaid limited indulgence into the matter, that is, in reducing the costs of Rs.5,00,000/- to Rs.2,00,000/-, we see no reason to make any further indulgence into the matter.

8. The appeal is accordingly dismissed along with the pending application.

Dasti under the signature of the Court Master.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 05, 2019

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