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

Date of Decision: 1st November, 2022

+ **CM (M) 1712/2019**

ANIL SABHARWAL

..... Petitioner

Through: Mr. Anuj Upadhyay, Advocate.

versus

RAKESH KUMAR ARORA

..... Respondent

Through: Mr. Amandeep Singh & Mr. Pradeep,
Advocates. (M:9711570956)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.46440/2022 in CM (M) 1712/2019

2. This is an application seeking exemption from filing original/certified copies of documents.

3. Exemption is granted subject to all just exceptions. **CM APPL.46440/2022** is disposed of.

REVIEW PET.273/2022 & CM APPLs.46441-42/2022 in CM (M) 1712/2019

4. These are applications seeking condonation of delay in re-filing and review of the order dated 2nd December, 2019, as also waiver/reduction of the amounts as directed to be paid by the said order. As per the said order dated 2nd December, 2019, in view of the defaults by the Petitioner herein/Defendant in the suit before the Trial Court being **CS No.59233 of 2016** titled **Sh. Rakesh Kumar v. Sh. Anil Sabharwal** (hereinafter “Defendant”), the cross-examination of PW-1 and PW-2 was permitted, subject to the Defendant depositing Rs.5 lakhs in two instalments. The

relevant portion of the said order reads as under:

“6. Considering the delay that has been caused by the Defendant, in view of the circumstances narrated above, it is directed that subject to the Defendant depositing a sum of Rs.5 lakhs before the Trial Court, which shall be kept in a fixed deposit, the Defendant is permitted to cross-examine PW-1 and PW-2, for which a specific date shall be fixed by the Trial Court. The cross-examination of both these witnesses shall be conducted on the same date. No further opportunity shall be granted for cross-examination.”

5. These applications have now been preferred seeking review and reduction/waiver of the amounts directed to be paid by the above order. Ld. counsel for the Defendant submits that the Defendant has no means to pay the said amount.

6. On behalf of the Respondent/Plaintiff (*hereinafter “Plaintiff”*), it is submitted that the matter is being repeatedly adjourned before the Trial Court due to the Defendant’s defaults.

7. Heard and perused the record of proceedings before the Trial Court. On a query from the Court as to whether any part of the said amount has been deposited, she submits that no amount has been deposited by the Defendant.

8. Moreover, a perusal of the order dated 15th March, 2022 in the proceedings before the Trial Court shows that none appeared for the Defendant on the said date, despite repeated calls, and the Defendant’s evidence was accordingly closed. The said order dated 15th March, 2022 reads as under:

“15.03.2022

Present: Plaintiff in Person

None for defendant.

Since morning matter has been called repeatedly, however, none has appeared for defendant. Record reveals that vide order of Hon'ble High Court dated 02.12.2019, defendant was given opportunity to cross-examine plaintiff's witness subject to cost of Rs. 5,00,000/-. Said order was stated to have been challenged before Hon'ble Division Bench. On last date of hearing, it was made clear to defendant that in absence of any stay granted in the matter by Hon'ble Division Bench, this court shall proceed in the matter and will record DE. Evidentiary affidavit of defendant's witnesses are already on record. It is informed by the plaintiff who is present in the court that till date defendant has not deposited said the cost which was a precondition for defendant to avail said opportunity to lead evidence. As per plaintiff, there is no stay granted by Hon'ble Division Bench in defendants' favour. In view of above circumstances I am inclined to close defendant evidence especially when none is present for defendant since morning despite repeated calls. Accordingly, DE is closed. Put up for final arguments on 11.07.2022.

9. Subsequently, on 11th July, 2022, an application was filed by the Defendant under Order XVIII Rule 17 CPC for recalling DW1 and DW2 for evidence, which was allowed subject to costs of Rs.20,000/- as under:

"11.07.2022

Present: Mr. Amandeep Singh, Ld. Counsel for plaintiff with plaintiff in person.

MR. Ajay Sinha, Ld. Counsel for defendant.

Ld. Counsel for defendant has filed application u/o 18 Rule 17 CPC for recalling of DW1 and DW2 for evidence. After some arguments, Ld. Counsel for defendant has submitted that he has submitted that he has no objection if the application is allowed subject to the costs and directions to the defendant that the DWs shall strictly appear on date for evidence. Accordingly, application filed by defendant u/o 18

Rule 17 CPC is allowed, subject to cost of RS.20,000/- payable to the plaintiff.

List for DE on 16.07.2022

It is made clear that both the defendant's witnesses shall remain present for recording of evidence and no request for adjournment shall be entertained."

10. Thereafter, as recorded in order dated 16th July, 2022 passed by the Trial Court, DW-1 was examined and partially cross-examined on the said date. The Defendant had also paid partial costs of Rs. 10,000/-, with the balance to be paid on the next date. Thereafter, vide order dated 5th August, 2022, the Defendant's evidence was closed and on 11th October, 2022, final arguments have commenced before the Trial Court. The matter is now listed on 4th November, 2022 for further hearing.

11. Considering the further proceedings that have taken place in the suit since the date of the order challenged in review, the fact that the suit is at the stage of final arguments, no payment made towards costs imposed by the challenged order dated 2nd December, 2019, and the belated listing of these applications after almost 3 years, this Court is not inclined to either condone the delay or issue notice in these applications. Moreover, there is no merit in the review petition as well. The applications and the review petition are, accordingly, dismissed.

12. The matter shall proceed for final arguments on the next date, as fixed before the Trial Court.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 1, 2022/dk/ms