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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 924/2018
EDMC Petitioner
Through: Mr. GD Mishra, Adv.

versus

NARESH KUMAR GUPTA & CO PVT LTD Respondent
Through: Mr. Arun Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **07.01.2019**

Submissions have been made on behalf of either side.

The petitioner assails the impugned order dated 27.01.2018 and 18.04.2018 of the Court of the ADJ-02(SHD), KKD in CS 2015/2016 whereby vide order dated 27.01.2018, the plaintiff's evidence (i.e. the petitioner herein) was closed with it having been observed to the effect that issues had been framed on 29.09.2010 and the plaintiff had not led any evidence and number of opportunities had already been granted to the plaintiff and even after the last opportunity granted on 20.04.2017, till date 27.01.2018, the plaintiff had led no evidence and that vide proceedings dated 20.12.2010 also it had been recorded to the effect that the plaintiff was not serious in prosecuting the case and earlier also the plaintiff's evidence had been closed and taking into account the conduct of the plaintiff i.e. the petitioner herein, the right of the plaintiff to lead its evidence was closed and the application filed by the plaintiff i.e. the petitioner herein seeking review/

modification of the order dated 27.01.2018 along with the application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the said application was also declined vide order dated 18.04.2018.

A perusal of the said proceedings dated 18.04.2018 indicates that it had been observed also to the effect that the plaintiff in the application under Section 5 of the Limitation Act, 1963 had not filled up the blank in para-4 regarding the days of delay in filing the said application which shows the negligence of the plaintiff i.e. the petitioner herein and it was observed that there existed no ground for review of the order dated 27.01.2018.

On behalf of the petitioner it has been submitted that the reasons for non-appearance of the witness of the petitioner on the date 27.01.2018 when the matter was fixed for evidence was the ailment of the Executive Engineer Mr. Mula Singh who had been substituted in place of the previous witness Mr. Piar Singh and a copy of the medical document was submitted with the said application before the learned trial Court as per which medical document dated 23.01.2018 as issued by the doctor of Dr. S.P.M. Chest Hospital (MCD), Patparganj, Delhi dated 25.01.2018, the said witness Shri Mula Singh, s/o Shri Raghuveer Singh, works Department EDMC had been advised rest for three days indicating *inter alia* to the effect that he had been suffering from fever, vomiting and loose motions form two days.

Learned counsel for the respondent has vehemently opposed the prayer made by the petitioner submitting to the effect that the proceedings before the learned trial Court adequately reflect to the effect that the petitioner has not been diligent in pursuing the suit filed by it in as much as the proceedings dated 22.11.2016 before the learned trial Court indicate that an application was filed by the plaintiff seeking that the evidence be allowed to be led by the newly appointed authorized representative whereupon on 07.02.2017, the authorized representative was not available it having been stated that he was not well, with the authorized representative again having not been present on 20.04.2017 due to his duty in the MCD elections with the matter again on 04.07.2017 having been renotified for plaintiff's evidence as the learned counsel for the plaintiff had sought time to inspect the record and on 31.07.2017 when the matter was thereafter fixed for plaintiff evidence, learned counsel for the plaintiff sought time as PW-1 had not brought original documents and the last opportunity had been given to lead his evidence for the date 23.10.2017, on which date, learned Presiding Officer was on leave and then thereafter the matter was renotified for 27.01.2018.

Apparently, ample opportunities had been granted to the plaintiff to adduce evidence and the witness of the plaintiff PW-1 has repeatedly not been present, there is no infirmity in the impugned order closing the plaintiff evidence.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 07, 2019/vm

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