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

+ CM(M) 1194/2018 and CM No.40675/2018

NEELAM NIGAM Petitioner

Through: Mr.Ashok Barnwal, Advocate

versus

DHARAMPAL BAJAJ Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **23.01.2019**

None for the respondent who is indicated to have been served through his son as per the process report for the date of hearing 1.10.2018 with a notice of the petition. The respondent was not present even on the last date of hearing, i.e., 19.12.2018 despite service.

The submissions thus have been allowed to be made by the petitioner.

Vide the present petition, the petitioner seeks the setting aside of the impugned order dated 26.7.2018 of the Court of the learned JSCC/ASCJ/GJ (NorthWest), Rohini Courts in CS No. 61883/16 vide which the plaintiff's right to lead evidence i.e. the right of the petitioner herein through the evidence, was closed in view of the factum that the plaintiff was not present on the date 26.7.2018 with it having been submitted that the plaintiff was not feeling well and sought one more opportunity to put forth the arguments.

The certified copies of the order sheets in the said suit CS No. 61883/16 indicate that after the framing of issues on the date 3.8.2017, the matter was fixed for plaintiff's evidence on the date

12.10.2017 on which date an opportunity was sought on behalf of the plaintiff to lead evidence submitting that the affidavit could not be prepared and an opportunity for the same was granted for the date 16.11.2017 with directions to the plaintiff to submit the affidavit within 15 days prior to the next date of hearing. On the date 16.11.2017, the affidavit in evidence is indicated to have been filed but as the same had not been filed within the stipulated period of time as directed vide order dated 12.10.2017, costs of Rs.1000/- were imposed on the plaintiff to be paid by the plaintiff to the defendant for non-compliance of the said directions.

Vide order dated 24.1.2018 of the learned Trial Court, the said costs of Rs.1,000/- imposed vide order dated 16.11.2017 were waived in view of the production of the registered envelope by the plaintiff indicating that the affidavit in evidence had been sent to the learned counsel for the defendant and that report being to the effect that the 'chamber of the counsel was locked'.

The proceedings thus vide order dated 24.1.2018 were renotified for 19.4.2018 for plaintiff's evidence on which date it had been submitted that the counsel for the plaintiff could not appear and an adjournment was sought with the matter having been renotified for 24.5.2018 and a last and final opportunity was granted to the plaintiff to complete the evidence directing further if the plaintiff did not lead evidence, her right to lead evidence would be closed. On 24.5.2018, the counsel for the plaintiff submitted that the plaintiff could not appear on the said date and filed medical documents and the matter had been thus renotified for 26.7.2018 directing the plaintiff to file

medical documents issued by a Government doctor on the next date of hearing failing which right to lead evidence would be closed.

It has been submitted on behalf of the plaintiff i.e. the present petitioner that the medical documents had been produced before the learned Trial Court, copies of which are placed on the record in the form of the documents issued by the Garg Clinic dated 8.5.2018 of the diagnostic centre Diagomet with diagnostic report dated 12.5.2018 and 11.5.2018 and a diagnostic report dated 11.5.2018 with a Bio-chemistry report also of the date 20.5.2018 to contend that the liver function test conducted on 20.5.2018 on the petitioner, i.e., the plaintiff, indicated the malfunctioning of the liver of the petitioner with the bio-chemistry report to the effect:

“BIOCHEMISTRY

Liver Function Test

<i>Bilirubin (Total)</i>	<i>10.91</i>	<i>High</i>	<i>0.1-1.0</i>	<i>mg/dL</i>
<i>Bilirubin (Direct)</i>	<i>8.39</i>	<i>High</i>	<i>0.00-1.20</i>	<i>mg/dL</i>
<i>Bilirubin (Indirect)</i>	<i>2.52</i>	<i>High</i>	<i>0.10-1.00</i>	<i>mg/dL</i>
<i>SGOT (AST)</i>	<i>3560</i>	<i>High</i>	<i>15-37</i>	<i>U/L</i>
<i>SGPT (ALT)</i>	<i>2120</i>	<i>High</i>	<i>14-59</i>	<i>U/L</i>
<i>ALK.Phosphatase</i>	<i>164</i>	<i>High</i>	<i>35-104</i>	<i>U/L</i>
<i>Gamma G.T.</i>	<i>75</i>	<i>High</i>	<i>05-55</i>	<i>U/L</i>
<i>Total Protien</i>	<i>7.0</i>		<i>6.4-8.2</i>	<i>U/L</i>
<i>Albumin</i>	<i>3.9</i>		<i>3.4-5.0</i>	<i>g/dL</i>
<i>Globulin</i>	<i>3.10</i>		<i>2.30-3.50</i>	<i>g/dL</i>
<i>A/G Ratio</i>	<i>1.26</i>		<i>1.20-2.30</i>	<i>”</i>

During the course of submissions that have been made at the outset, it had been submitted that the said documents had been placed on record by the petitioner and merely because they were not the

documents of a government hospital in terms of the order dated 24.5.2018, the same had not been considered by the learned Trial Court.

Taking into account the factum that there are documents on the record showing that the plaintiff was suffering apparently from jaundice in view of the bio-chemistry report referred to herein above of the date 20.5.2018 and the submissions made on behalf of the plaintiff that in view of the kind of ailment that the plaintiff was suffering from, the non-appearance on the date 26.7.2018, when the matter was listed for plaintiff's evidence was not deliberate and not intentional and thus she could not appear, cannot be ignored and are accepted taking into account under the circumstances also the factum that the respondent has chosen not to put in appearance despite the notice having been served with of the petition and has chosen not to refute the contention now raised by the petitioner.

The impugned order dated 26.7.2018 of the learned Trial court JSCC/ASCJ/GJ (NorthWest), Rohini Courts in CS No. 61883/16 is thus set aside with directions to the plaintiff to complete her evidence before the learned Trial Court on the date that would be fixed by the learned Trial Court to lead evidence and only one single opportunity for the same is granted.

A copy of this order be sent to the learned Trial Court.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 23, 2019/sv