

\$~52

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1195/2018 & CM APPL. 40677/2018
MALA BATAR & ORS Petitioner
Through

versus

MUNNA LAL Respondent
Through Ms. Niraja Singh, proxy counsel for
Mr. Manna Lal, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **04.02.2019**

It has been submitted on behalf of the petitioner that in terms of the order dated 01.10.2018, the costs of Rs.5,000/- have already been deposited before the learned Trial Court and the receipt in relation thereto is indicated to be placed on record as filed on 12.10.2018.

The petitioner seeks the setting aside of the impugned order dated 16.05.2018 of the learned ASCJ-cum-JSCC-cum GJ (South), Saket Courts, New Delhi in CS No. 84958/2016 vide which the application seeking review under Section 114 CPC seeing review of the order dated 22.08.2017 was declined having observed to the effect that there was no ground for review of the order dated 22.08.2017 made out. The order dated 22.8.2017 in the said proceedings indicate that the matter was at the stage of completion of pleadings and costs had been imposed on the defendants no. 1 to 4 i.e. the petitioner herein vide orders dated 14.02.2017, 26.04.2017 and 11.07.2017 and costs in terms of none of these orders had been paid by the defendants

no. 1 to 4 till date i.e. 22.08.2017 and it was observed to the effect that on the last date of hearing it had been made clear that the costs be paid by the next date i.e. 22.08.2017 failing which their defence would be struck off but again the learned counsel for the defendants no. 1 to 4 had sought time to pay the costs with it having been observed that the defendants no. 1 to 4 had been granted various opportunities and further indulgence cannot be granted in view of the provision of Section 35B of the CPC.

No reason has been explained as to why no compliance had been made in terms of the orders dated 14.02.2017, 26.04.2017 and 11.07.2017 and thus it is apparent that there was a flagrant violation of the directions. Though it is sought to be contended on behalf of the petitioner that such costs have been deposited the same does not assist the petitioner. It has been sought to be submitted on behalf of the petitioner that the replication was also sought to be submitted by the plaintiff of the said suit to the written statement of the defendants no. 1 to 4 qua which learned counsel for the respondent submits that the said replication was not taken on record by the Court in as much as the written statement had not been allowed to be taken on record. Learned counsel for the petitioner submits that the copy of the replication is in his possession and has produced the same.

Be that as it may, the impugned order indicates complete flagrant violation of the orders of the learned Trial Court repeatedly and as observed hereinabove, the deposit of costs in terms of the order of this Court do not in any manner assist the petitioner, there is no ground thus for review of the order dated 22.08.2017 as rightly observed by the learned Trial Court vide the impugned order.

The petition assailing the impugned order dated 16.05.2018 and the

accompanying application are declined.

However at this stage, a prayer is made on behalf of the petitioner seeking to cross examine the plaintiff examined as PW1 in the case submitting that the learned counsel for the petitioner could not appear before the learned Trial Court on 30.10.2018 and a pass over had been requested beyond lunch hours by the proxy counsel which was not granted by the learned Trial Court and thus only though the proxy counsel was given opportunity for cross-examination of the plaintiff, the same having not been availed of by the proxy counsel, the cross-examination of the PW1 was closed. It has been submitted on behalf of the petitioner that grave prejudice would be caused to the petitioner if the cross-examination of the plaintiff is not allowed. In the interest of justice, the prayer is allowed subject to the payment of Rs.10,000/- by the petitioner to the plaintiff on the date 05.02.2019 and only one single opportunity is granted for cross-examination of PW1. However, the defence of the petitioner cannot be put in the said cross-examination.

Copy of the order be given *Dasti* under the signatures of the Court Master.

ANU MALHOTRA, J

FEBRUARY 04, 2019/MK