

\$~11.

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

+ **FAO(OS) 190/2018 & C.M.No.52609/2018**

NAVEEN MALHOTRA Appellant
Through: **Mr.S.C.Singhal, Adv.**

Versus

SIMMI DHAWAN Respondent
Through: **Mrs.Kajal Chandra, Adv. with
Ms.Perna Chopra, Adv.**

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

ORDER
08.02.2019

%

1. This appeal has been filed by the appellant who is plaintiff in Civil Suit being C.S.(OS) No.75/2017 which is pending before the learned Single Bench and the appellant feels aggrieved by the orders passed by the learned Single Bench thereby closing the right to lead evidence and cross-examination of PW-1 and finally the entire evidence of the plaintiff/appellant herein.

2. The plaintiff has filed the civil suit in question for recovery of Rs.6,05,00,000/- against the defendant. Pleadings in the suit were completed and issues were framed on 9th April, 2018 and the matter was transferred to a Bench of this Court on 31st August, 2018 wherein the Court directed the plaintiff to conclude his evidence within one month. The case

was then fixed for evidence on 25th September, 2018, on which date, the plaintiff/appellant filed the evidence of his witnesses and himself and presented himself for cross-examination on 25th September, 2018. He was substantially cross-examined on the said date and thereafter, the cross-examination was deferred to 16th October, 2018 for evidence of the plaintiff/appellant and his witnesses. However, on 16th October, 2018 when the plaintiff/appellant did not appear for his cross-examination, his cross-examination was closed and thereafter when his other witnesses also did not appear in spite of issuance of summons on 23rd October, 2018, the entire evidence was closed. Challenging the said orders dated 16th October, 2018 and 23rd October, 2018, this appeal has been filed.

3. Having heard the learned counsel for the parties, we find that after the appellant was partly cross-examined on 25th September, 2018 and the next date for his cross-examination and evidence was fixed on 6th October, 2018, in between, i.e., on 28th September, 2018, he was arrested by Bihar Police at New Delhi in connection with FIR No.568/2016 registered at Patna, Bihar and taken to Patna by Bihar Police. He was released by Bihar Police only after 16th December, 2018, that is, after filing of this appeal on 13th December, 2018 through his attorney holder. It is the case of the appellant that as he was arrested by Bihar Police, he could not appear before the Court on 16th October, 2018 and 23rd October, 2018 and as his sister was also held up in Patna because of his arrest and criminal case, he could not inform the counsel and it is indicated that due to this reason the default was committed in appearing for cross-examination on 16th October, 2018 and producing the witnesses on 23rd October, 2018.

4. There is no rebuttal to this aspect of the matter, that is, the arrest of the petitioner and his being in custody between 28th September, 2018 to 16th December, 2018. Even though, the learned counsel for the respondent tried to indicate that the appellant was trying to delay the matter, we are of the considered view that once the appellant, due to reasons beyond his control, was unable to be present in the Court between 28th September, 2018 to 16th December, 2018 when the impugned orders closing his cross-examination and evidence were passed, interest of justice requires and this is a fit case where on this ground alone, the appeal could be allowed and one more opportunity granted to the appellant to make himself available for cross-examination and produce all his witnesses.

5. Accordingly, we allow this appeal quash the impugned orders dated 16th October, 2018 and 23rd October, 2018.

6. We are informed that suit is now fixed before the learned Single Judge on 11th February, 2019, it is, therefore, directed that the appellant shall remain present in the Court on the next date, i.e, 11th February, 2019 and the Court may either get him cross-examined on the same date or fix a date for his cross-examination. Thereafter, within a period of 45 days, the appellant, on any date as may be directed by the Court, shall get all his witnesses examined/cross-examined and the matter shall thereafter be proceeded with in accordance with law.

7. Any default on the part of the appellant in complying with any of the aforesaid directions shall entitle closure of his rights as may be thought appropriate by the learned Single Judge.

8. With the aforesaid, the appeal stands allowed. The pending application also stands disposed of.

Order *dasti* under the signature of the Court Master.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 08, 2019

'anb'