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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 104/2020 and CM APPL. 3583/2020

POONAM KUMAR

..... Petitioner

Through: Mr. Shanenu Aggarwal, Advocate
(M: 9999347367).

versus

M/S H M ENTERPRISES

..... Respondent

Through: Mr. Fahad Imtiaz, Advocate (M:
9643196995).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.03.2020

1. The present petition challenges the order dated 15th January, 2019 by which the right to cross examine the Plaintiff's witness PW1 has been closed by the Trial Court, and order dated 14th October, 2019 by which an application seeking recall of the order dated 15th January, 2019 has also been dismissed.
2. The petition arises out of a suit for recovery of a sum of Rs. 89,440/- along with interest. The affidavit of PW1 was filed by the Plaintiff and for the first time, PW1's examination in chief was recorded on 10th January, 2018. On 22nd February, 2018 some objections were raised, and the Plaintiff sought time to move an application for exhibition of the documents attached with the evidence by way of affidavit. Thereafter, on four dates i.e. 26th May, 2018, 7th August, 2018, 18th September, 2018 and 17 November, 2018, the Defendant did not appear in the matter. Finally, on 15th January, 2019 since none appeared for the Defendant, after recording the examination in

chief, the Trial Court closed the Defendant's right to cross examination and listed the matter for Defendant's evidence.

3. In the order dismissing the recall application, the Trial Court records that three opportunities were given for cross examination and hence further opportunity cannot be granted.

4. Ld. counsel for the Petitioner submits that it was only on 15th January, 2019, for the first time, the Plaintiff's witness had concluded the examination in chief, and the immediate next effective date was 14th October, 2019 on which date the application seeking recall was decided. He submits that three opportunities were never granted for cross examination and this has been wrongly recorded by the Trial Court. On the other hand, ld. counsel for the Plaintiff submits that Defendant had stopped appearing for more than a year in the matter and accordingly the Trial Court's order is justified.

5. In the order dated 14th October, 2019, the trial court rejects the prayer to recall the witness on the ground that more than three opportunities were given. The relevant portion of the order reads as under:

"Plaintiff has already been granted multiple opportunities and certainly more than three opportunities to cross-examine plaintiff witness. The proviso to Order XVII Rule 1 CPC provides that no adjournment shall be granted more than three times to party during the hearing of the suit. The court is in agreement with the submissions made on behalf of plaintiff. No ground is made out to allow the present application. Hence the same is dismissed. The application is disposed of accordingly"

A perusal of the order sheet reveals that though adjournments were sought in the past, once the examination in chief was concluded, only one opportunity

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was given for cross examination and not three opportunities as recorded by the trial court. Considering the fact that there has been an error in the recording by the Trial Court, the Defendant is given one last opportunity to cross examine PW1, subject to payment of Rs. 10,000/- as costs to the Plaintiff. The same shall be paid on the date when the witness appears before the Trial Court.

6. On the date fixed by the Trial Court, the cross examination shall be concluded by the Defendant, and no further opportunity shall be granted. The present order is peremptory and if the costs are not paid or the cross examination is not conducted on the date fixed, no further permission can be granted by the Trial Court

7. The petition with all pending applications is disposed of.

Prathiba

PRATHIBA M. SINGH, J.

✓ MARCH 03, 2020
MR/RG