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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 295/2020 and CM APPL. 8737/2020**

SANJAY VERMA Petitioner
Through: Mr. K. Sunil and Mr. Anuj Ranjan,
Advocates (M: 9868317604).

versus

HARSH MANI MOHINDRA Respondent
Through: Ms. Sanjoli Mehrotra, Mr. Shresth
Choudhary and Mr. Soumil Gonsal
Ves, Advocates (M: 9891051888 and
9910527888)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **04.03.2020**

1. The grievance in this petition is in respect of the order dated 22nd February, 2020 by which the application seeking recall of the order dated 28th January, 2020 was allowed only in respect of one witness i.e. DW3 and no opportunity was given for summoning of the official witnesses.
2. The submission of ld. counsel for the Petitioner herein/Defendant (*hereinafter 'Defendant'*) is that in the list of witnesses he had arrayed a total of 9 witnesses and owing to the order passed by this Court on 1st October, 2019 which came to the knowledge of the ld. ADJ only in January, 2020, the evidence has been closed without giving an opportunity to summon the official witnesses.
3. In the present suit, this court had occasion to consider the matter in CM (M) 1456/2019. Order passed on 1st October, 2019, had taken into consideration the number of unnecessary adjournments which the Defendant was seeking in the matter and had accordingly passed the following order:

"1. The present petition has been filed by the

Petitioner/Plaintiff (hereinafter, "Plaintiff") in view of the repeated adjournments which have been granted to the Respondent/Defendant (hereinafter, "Defendant") before the Id. Trial Court. The contention of the Id. counsel for the Plaintiff is that the evidence of the Plaintiff was closed on 16th March, 2016. The Defendant, however, is yet to complete the evidence, despite the fact that the affidavit of evidence has already been filed. He submits that there are total of three witnesses of the Defendant and only one witness has been examined till date.

*2. The present suit is a suit for possession, damages/mesne profits and injunction, which was filed in 2011. The Plaintiff was forced to approach this Court even on an earlier occasion when the Defendant had adopted dilatory tactics, according to the Id. counsel for the Plaintiff. Id. Counsel for the Plaintiff relies on the Constitution bench judgment of the Hon'ble Supreme Court in **Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509**, to argue that speedy adjudication is an essential component of the constitutional value of "Access to justice".*

3. This Court has perused the order sheet which has been placed on record. It clearly shows that since 16th March, 2016 i.e., when the Plaintiff's evidence was closed, repeated adjournments have been sought by the Defendant and on some occasions, costs have also been imposed on the Defendant. On 24th July, 2017, the evidence of the Defendant was closed, however, on an application moved by the Defendant, on 21st August, 2017, the same was re-opened, subject to costs of Rs.20,000/-.

4. The culture of adjournments has plagued Trial Courts and has resulted in enormous delays in disposal of suits and timely adjudication. The order sheet of the present suit is clear evidence of such an adjournment culture. The repeated adjournments which have been sought show that though someone has been present on

behalf of the Defendant, in effect, no proceedings have taken place, inasmuch as on one ground or the other, i.e. the witness not being present, the client being ill or the non-availability of the counsel, the matter has been repeatedly adjourned. It is under these circumstances that the Plaintiff has approached this Court.

5. The case is stated to now be listed on 14th November, 2019. Without going into further details of the manner in which the matter is being adjourned, suffice it to say that the Id. Trial Court ought to take up the matter with diligence and expedience and not give unnecessary adjournments to the Defendant. The evidence of the Defendant's witnesses shall be recorded without giving any adjournment to either of the parties and the suit itself shall be disposed of within a period of six months. If any of the parties takes an adjournment in this matter, the Id. Trial Court is directed to close the right of evidence or cross-examination of the said party and proceed to decide the matter finally.

6. Accordingly, the petition and all pending applications are disposed of with the above observations. Let a copy of this order be sent to the concerned Additional District Judge in CS No, 610252/16 titled Harsh Mani Mohindra v. Sanjay Verma. Dasti."

4. Despite the passing of the above order in which clearly, the Defendant was put to terms in order to ensure that no further adjournments are granted, there appears to have been no improvement in the Defendant's conduct. The Defendant's witnesses - DW2 and DW3 i.e. Ms. Sonia Verma and Mr. Ashwani Verma respectively were directed to appear on 27th January, 2020, however, they did not appear before the Court. They were again directed to appear on 28th January, 2020, on which date, DW2 was examined, cross examined and was discharged. However, DW3 still did not appear.

Accordingly, the evidence of the Defendant was closed. An application is thereafter moved in which a cryptic prayer for leading evidence has been made. The prayer in the application reads as under:

“It is therefore prayed that the order dated 28.1.2020 closing the right of the defendant to lead evidence may kindly be recalled and the applicant/ defendant may kindly be allowed to lead his evidence in the aforesaid case, in the interests of justice. Any further and/or such other relief (s) deemed fit and proper may also be passed / granted.”

No prayer was made on behalf of the Defendant seeking permission to summon the official witnesses as well.

5. This application was heard by the Trial Court on 22nd February, 2020 and on the said date, DW3 is cross examined and discharged along with costs. On the said date also, there is no submission made on behalf of the Defendant seeking permission to summon any further witnesses. However, the present petition seeks to assail the said order of the Trial Court on the ground that the other witnesses who were mentioned in the list ought to be permitted to be summoned.

6. Ld. counsel for the Defendant submits that as per the list of witnesses, the Defendant does not wish to examine any other witnesses except official witnesses 5,6,7 and 9. The submission is that they have to produce official records and accordingly their appearance would be important for adjudication of the issues framed in the matter. There was nothing stopping the Defendant, since the passing of the order dated 1st October 2019, to summon these witnesses. A perusal of the order sheet of this case in the Trial Court shows that since 2016, the matter has been fixed for Defendant's

evidence, however, the Defendant has not led its evidence with diligence. This Court is in fact not inclined to allow the prayer of the Defendant. However, in order to avoid any unnecessary and avoidable challenges to the final order that may be passed once the final adjudication takes place, directions are being issued only in respect of the official documents or for summoning only the official witnesses.

7. The Defendant has the option of obtaining certified copies from the official records of the DDA, the Vikas Puri police station and the Sub-Registrar, Janakpuri. If the certified copies are not available, the Defendant is permitted to summon the witnesses on the date which may be fixed by the Trial Court. Only one date shall be given by the Trial Court for summoning these witnesses. If on the said date, either certified copies are not placed on record, or the witnesses are not summoned with the proper official records, the present order shall be peremptory in nature and no further permission shall be granted to the Defendant to produce any more witnesses. The above permission is being granted to the Defendant subject to payment of Rs. 20,000/- as costs which shall be paid to the Respondent herein/Plaintiff on or before the next date in the Trial Court. Upon the recordal of the statements of official witnesses or after exhibiting the records/certified copies, the trial court shall proceed with the final arguments in the matter and adjudicate the matter within three months from today.

8. With these observations, the petition is disposed of. *Dasti*.

PRATHIBA M. SINGH, J.

MARCH 04, 2020
MR/A.S.