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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Judgment: 16th August, 2021**

+ CM(M) 531/2021
HI-TECH GEOSYNTHETICS PVT. LTD. Petitioner
Through: Mr. Durgesh Pal, Advocate.
versus
SHUBH CONSTRUCTIONS CO. Respondent
Through: Mr. Yash Anand, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.
[VIA VIDEO CONFERENCING]

CMs 26293/2021 & 26294/2021 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) 531/2021 & CM 26292/2021 (for restraining the Ld. ADJ from passing final order in the suit)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 19th March, 2021 passed by the Trial Court in terms of which, two applications filed by the petitioner (i) under Order VII Rule 14 (3) of the Civil Procedure Code (CPC) for bringing certain documents on record; and (ii) under Order XVIII Rule 17 of the CPC for leading evidence to prove the same, have been rejected.

4. The Trial Court while dismissing the aforesaid applications filed by the petitioner has reasoned that (i) the documents sought to be placed on record by the petitioner were in possession of the petitioner at the time of

recording of evidence, however, the petitioner chose to wait until the stage of final arguments to place the same on record to fill the lacuna in its case; and (ii) no cogent reason has been given by the petitioner for the delay in placing the said documents on record and for leading additional evidence.

5. The counsel for the petitioner submits that the petitioner who was the sub-contractor of the respondent, has filed the suit for recovery of outstanding amounts due to it. He further submits that the documents, being the 'Daily Progress Reports' in respect of the work performed by the petitioner, now sought to be placed on record are vital documents for proving the case of the petitioner.

6. The counsel appearing on advance notice on behalf of the respondent opposes the petition. He submits that the said applications were filed belatedly by the petitioner, only after the evidence of both sides were completed and when the respondent had filed its written submissions. It was only then that the petitioner realised that he would need to file these documents and therefore, the said applications were filed to fill in the lacuna in the case of the petitioner.

7. I have considered the rival submissions. Undoubtedly, there has been a delay in filing the aforesaid applications on behalf of the petitioner. The applications have been filed only after the evidence of both sides had been completed and the matter was to proceed for final hearing. Ordinarily, the Court should not interfere in such matters and condone the delay in filing of such applications. However, in the facts and circumstances of the present case, it appears that the documents now sought to be filed are relevant documents which will have a bearing on the outcome of the case. It is settled

position of law that matters of procedure should not come in the way of dispensation of justice. Reference in this regard may be made to ***K.K. Velusamy Vs. N. Palanisamy*** (2011) 11 SCC 275 where the Supreme Court has held that applications for reopening evidence should not be dismissed mechanically and the Courts should consider whether the evidence sought to be produced would lead to a just and fair adjudication and whether non-production thereof was for valid and sufficient reasons.

8. In my considered opinion, the 'Daily Progress Reports' sought to be placed on record by the petitioner are relevant documents for just and fair adjudication of the case. Further, the counsel for the petitioner has given a plausible explanation with regard to the delay in filing the said documents, since the said documents were at the warehouse site of the petitioner in Bihar and it took a while for the petitioner to obtain the same. In the facts and circumstances of this case, it is deemed appropriate if the said documents are taken on record and the petitioner is given one opportunity to prove the said documents.

8. The counsel for the respondent apprehends that if the documents are taken on record, it will be very difficult for him to summon the PWD officers who have counter signed all these documents. Therefore, he submits that while taking the said documents on record, the Trial Court may be directed to exercise its discretion in terms of the authenticity of the said documents.

9. Needless to state, the authenticity and genuineness of the aforesaid documents would be determined by the Trial Court. The petition is disposed of with the following directions:

(i) There shall be only one witness on behalf of the petitioner for the limited purpose of proving the aforesaid documents and the petitioner will bring the said witness on the next date fixed before the Trial Court i.e. 2nd September, 2021.

(ii) The respondent shall have the right to cross-examine the said petitioner's witness on the next date fixed before the Trial Court i.e. 2nd September, 2021 and if need be, one day thereafter to be fixed by the Trial Court.

(iii) The respondent shall have the right to lead any further evidence that may be required in light of the aforesaid documents being taken on record.

(iv) It is clarified that the aforesaid directions would not amount to reopening the evidence already recorded in the case.

(v) No adjournment shall be taken by the parties.

(vi) Thereafter, the Trial Court shall proceed with the final hearing of the case in an expeditious manner.

(vii) The petitioner shall pay costs of Rs. 20,000/- to the respondent on account of the delay caused on or before the next date fixed before the Trial Court i.e. 2nd September, 2021.

AMIT BANSAL, J

AUGUST 16, 2021

Sakshi R.