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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : 21st February, 2022

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CRL.M.C. 511/2022**CRL.M.A.2223/2022**

SAURABH KUMAR PANDEY

..... Petitioner

Represented by: Mr.Jitin Sahni and Ms.Mamta
Saxena, Advocates.

versus

GEETI BHAGAT

..... Respondent

Represented by: Mr.Vaibhav Gaggar and
Mr.Akash Chatterjee, Advocates.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****JUDGMENT: (ORAL)**

The hearing has been conducted through Video Conferencing.

1. By this petition, petitioner seeks setting aside of the order dated 9th October, 2021 by virtue of which the learned Metropolitan Magistrate closed the defence evidence of the petitioner as also the order dated 12th January, 2022 whereby the application under Section 311 Cr.P.C. filed by the petitioner in Complaint Case No.464747/2016 titled as '*Geeti Bhagat vs. M/s Popularity Homes Pvt. Ltd. & Ors*' was dismissed by the learned Metropolitan Magistrate, NI act, South District, Saket Courts.
2. Contention of learned counsel for the petitioner is that on the first date, that is, 15th September, 2021 the petitioner was not available and on the next date, that is, 9th October, 2021 learned counsel for the petitioner had sent his medical documents showing that he was unwell on 7th October, 2021 and without noting the medical condition of the



petitioner's counsel defence evidence was closed vide order dated 9th October, 2021.

3. A perusal of the order sheets of the learned Trial Court would reveal that the matter was listed for defence evidence for the first time on 14th November, 2017 when no DW was present nor steps were taken and an adjournment was sought for leading defence evidence by filing an exemption application on behalf of accused Nos.3, 4 and 6 and thus the matter was adjourned to 23rd January, 2018 giving last opportunity to the accused persons to lead the defence evidence. On 23rd January, 2018 it was informed that the accused Nos.3 and 6 were in judicial custody in Meerut Jail under investigation of Tax Department and that the learned counsel for the accused has filed a revision petition against the order dated 10th August, 2017 whereby an application was dismissed. The Court thus adjourned the matter to 17th March, 2018 when it was informed that the proceedings had been stayed. The revision petition filed by the accused was disposed of vide order dated 22nd March, 2018 passed by the learned Additional Sessions Judge and thereafter as per the directions statement under Section 313 Cr.P.C. was directed to be recorded and production warrants of accused Nos.3 and 6 were issued from Meerut Jail. Since the production warrants were not received, the matter was again re-listed for 4th July, 2018 when an exemption application was moved on behalf of accused Nos.3 and 4. Repeated exemption applications were filed even on the next dates and statements under Section 313 read with Section 281 Cr.P.C were finally recorded on 15th December, 2018 whereafter the matter was again listed for leading defence evidence on 16th February, 2019. On 16th February, 2019 an



adjournment was sought on behalf of accused persons. Again on 6th April, 2019 an exemption was sought and the matter was listed for defence evidence on 9th July, 2019. On 9th July, 2019 an order was received from the learned Additional Sessions Judge indicating that the revision petition filed by the accused has been disposed as withdrawn and thus the matter was listed for defence evidence on 2nd August, 2019.

4. On 2nd August, 2019 the Court noted that the matter was listed for defence evidence since last three dates and no steps have been taken and thus a cost of ₹2,000/- was imposed upon the accused persons to be paid to the complainant and only one last and final opportunity was granted to the accused persons for leading the defence evidence and the matter was listed on 19th October, 2019.

5. On 19th October, 2019 it was informed that the petitioner herein was taken in judicial custody however, the counsels appearing did not know in which jail or in which FIR he was lodged. On 23rd November, 2019 it was informed that the petitioner was lodged in Tihar Jail and thus production warrants were issued for 18th January, 2020 when the learned Presiding Officer was on leave. On 19th February, 2020, the next date none appeared and hence fresh production warrants were issued against the petitioner besides non-bailable warrants against Satyender Singh Tomar. On 19th February, 2020 the learned Trial Court dismissed the application of the accused under Section 311 Cr.P.C. and on 20th July, 2020 the petitioner was unable to join the proceedings as he was lodged in jail and it was informed that he could not be released from jail in view of the production warrants. The court cancelled the production warrants and directed the petitioner to appear on the next date, that is, 3rd



September, 2020 when the proceedings were taken up virtually. Similar was the situation on 14th October, 2020 and 15th January, 2021. In the meantime, the matter was listed for the decision on the application filed. The accused were directed to file their list of witnesses which they had not filed till date and examine defence evidence on the next date and it was clearly stated that only two opportunities shall be given to lead defence evidence failing which the opportunity shall be closed. The matter thereafter listed for 1st October, 2021, when it was adjourned to 9th October, 2021 on which date again though the list of witnesses was filed by Satyender Singh Tomar, no list of witness was filed by the petitioner. Thus the opportunity qua the petitioner was closed.

6. Thus the default dates for leading defence evidence are not only 15th September, 2021 and 9th October, 2021 but the petitioner has not been leading the defence evidence since 14th November, 2017.

7. Further in this matter, the complainant filed a petition before this Court on 18th August, 2021 seeking speedy disposal of Criminal Complaint Cases No.471022/2016, 471298/2016, 471297/2016, 464748/2016 and 464747/2016 filed against the petitioner and other accused before the learned Metropolitan Magistrate, Saket Court, New Delhi under Sections 138/141 of the Negotiable Instruments Act, 1881 wherein this Court noting that the complaints pertain to the year 2016 directed the learned Trial Court to expedite the hearing and make an endeavour to dispose of the same within six months. The accused filed a petition seeking review of the order dated 18th August, 2021 before this Court which was dismissed vide order dated 1st September, 2021 with a cost of ₹5000/- The accused Satyender Singh Tomar thereafter filed a



special leave to appeal petition against the orders passed by this Court which was dismissed noting it to be a frivolous petition with a cost of ₹25,000/- in addition to cost of ₹5,000/- already imposed by this Court.

8. As noted above from the various orders, the petitioner and the other co-accused on one pretext or other are delaying the proceedings and in view of the ample opportunities granted by the learned Trial Court, this Court finds no ground to set aside the two impugned orders passed by the learned Trial Court.

9. Petition and application are dismissed.

10. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

FEBRUARY 21, 2022
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