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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 23.03.2022*

+ CM(M)-IPD 7/2022 & CM APPL. 13590/2022, 13591/2022

REDIFF.COM INDIA LTD. Petitioner

Through: Mr. Vakul Sharma, Advocate

versus

M/S LACOSTE S.A. & ANR. Respondents

Through: None

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JYOTI SINGH, J (ORAL)**

1. Present petition has been filed under Article 227 of the Constitution of India laying a challenge to the orders dated 23.10.2021, passed by the learned Trial Court in case titled M/s. Lacoste SA. v. M/s. Rediff.com India Ltd. and Ors. in TM No.24/2016. Petitioner herein was Defendant No.1 in the suit and Respondent No.1 herein was the Plaintiff.

2. By the first impugned order, learned Trial Court granted adjournment to the Plaintiff to produce the Authorised Representative as a witness on the ground that the witness was unwell, subject to payment of costs of Rs.10,000/- to the Defendant, within four weeks. Plaintiff was further directed to file the affidavits of other witnesses, within ten days as last opportunity and to ensure that all witnesses were present on the next date of hearing. List of witnesses, if not filed were directed to be filed by the parties within six weeks and the matter was posted for Plaintiff's evidence on 24.03.2021, 25.03.2021 and 26.03.2021. It is averred by the Petitioner



that there is a typographical error in the impugned order with respect to the dates as the dates were actually 24.03.2022, 25.03.2022 and 26.03.2022.

3. On the same day, as the record shows, the matter was again taken up in the later part of the day on an application being filed on behalf of the Plaintiff for waiver of the cost, on the ground that the counsel was held up on the first call of the matter and could not appear in the Court and non-appearance of the Representative/witness was for no fault of the witness. Counsel for the Plaintiff assured the Court that the witnesses shall be present on the next date of hearing.

4. Looking to the submissions made by the counsel for the Plaintiff, learned Trial Court recalled the order to the extent of imposition of cost and recorded the undertaking of the counsel for the Plaintiff that he shall inform the opposite side of the said order and communicate the order passed.

5. Learned counsel for the Petitioner submits that the learned Trial Court has failed to appreciate the provisions of Order 16 CPC, while granting another adjournment to the Plaintiff/Respondent No.1 herein on 23.10.2021 to file the Plaintiff's evidence, despite passage of two and a half years from the date of framing of issues. In doing so, the Court has ignored its previous three orders including the order dated 08.11.2019 wherein it was recorded that no further opportunity would be granted for Plaintiff's evidence since the Plaintiff has already been afforded several opportunities and the issues were framed way back on 16.12.2017.

6. It is further contended that while the Trial Court had granted adjournment subject to imposition of cost, when the matter was taken up in the morning but contrary to the said order, in the later part of the day the order to the extent of the cost was recalled, without any reason and in the



absence of counsel for the Defendant. It is the grievance of the learned counsel that the Plaintiff is only delaying the matter and grant of further opportunity is not in the interest of expeditious disposal of the suit. It is further prayed that the impugned orders be stayed.

7. I have heard learned counsel for the Petitioner and perused the impugned orders.

8. It is undisputed that the suit is at the stage of trial and slated for Plaintiff's evidence on 24.03.2022, 25.03.2022 and 26.03.2022. Needless to state that if the present petition is entertained and stay of the second impugned order is granted, it would only result in delay of the trial and would not be in the interest of the Petitioner, whose very grievance is that the suit must be disposed of, expeditiously.

9. Learned counsel for the Plaintiff has relied heavily on the provisions of Order 16 Rule 1 CPC wherein a period of 15 days is provided to the parties to the suit from the date of framing of issues, to file a list of witnesses, which the parties propose to call either to give evidence or to produce documents. Learned counsel, however, has been unable to show any law which bars the Court from extending the period of 15 days provided under Order 16 Rule 1 CPC. Therefore, there is no merit in the contention that the learned Trial Court erred in extending the time for filing the list of witnesses.

10. Relevant it is to note that the Petitioner has itself waited for a period of nearly five months to challenge the impugned order dated 23.10.2021. While the learned counsel seeks to explain the delay on the ground that on account of Covid-19, the affidavits were not being notarized, this Court cannot accept this as a justified explanation for the reason that exemptions



were being sought and were being granted on account of the Pandemic for filing notarized affidavits.

11. It has been repeatedly held by the Supreme Court that Rules or procedures are the handmaid of justice and the language employed by the legislature in provisions relating to procedures must be construed liberally, to advance the cause of justice, with a caveat that in a given case if the Court finds that an unscrupulous party is adopting dilatory tactics, it must be dealt with a strict hand. Hon'ble Supreme Court in ***Sambhaji and Ors. Vs. Gangabai and Others, (2008) 17 SCC 117*** held as under :-

“9. ...The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

12. No doubt that on 08.11.2019, the learned Trial Court had granted last opportunity to the Plaintiff to file the list of witnesses and affidavits by way of evidence, however, in its wisdom, the Trial Court granted further time to the Plaintiff to lead evidence and also fixed the dates for the evidence, as aforementioned, subject to payment of cost. It is also a fact that for about



two years there were no hearings in the Court on account of the Pandemic. The order granting further opportunity, in my considered opinion, suffers from no infirmity warranting interference.

13. In so far as the imposition of cost is concerned, the impugned order, to the extent it recalls the initial order and grants waiver of the cost, deserves to be set aside. The Trial Court had, in my view, correctly observed in the first instance that since the issues were framed in the year 2017, the adjournment should be granted subjecting the Plaintiff to certain terms so as to curb unnecessary adjournment and further delay in the trial. The explanation rendered by the counsel for the Plaintiff for non appearance on 23.10.2021 was not a justification for the non production of the witnesses on the said date or filing the list of witnesses and the affidavits by way of evidence which were to be filed prior to the said date and therefore the order waiving the cost was completely unwarranted. In fact by granting further time subject to costs, the trial Court had balanced the matter between both the parties.

14. Impugned orders, except to a limited extent, call for no interference and it would be in the interest of the Petitioner herein/Defendant No.1 as well as the Plaintiff/Respondent No.1 herein, if the trial continues unhindered.

15. Accordingly, the second impugned order dated 23.10.2021, to the extent of waiving the cost, is set aside. Respondent No.1 herein shall pay a cost of Rs.10,000/- to the Petitioner herein, within a period of four weeks from today.



NEUTRAL CITATION NO: 2022/DHC/001220

16. Petition along with the applications stands disposed of in above terms.

JYOTI SINGH, J

MARCH 23, 2022

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