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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 287/2022 & CM No. 15775/2022

ROYAL BRASS HOUSE PVT LTD Petitioner
Through: Mr. J.S. Malik, Adv.

versus

RAJESH GUPTA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
04.07.2022

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1. The impugned order, dated 31st January 2022, passed by the learned Additional District Judge (“the learned ADJ”) disposes of an application filed by the petitioner, as the defendant in CS DJ 8651/2016 (*Rajesh Gupta v. M/s. Royal Brass House Pvt Ltd*) under Order XVIII Rule 17 read with Order XI Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), for recalling Mr. Perminder Kaushik, Relationship Manager of M/s Best Roadways Limited (BRL), who had deposed in the proceedings as DW-2.

2. Given the nature of controversy, no detailed reference to facts is necessary.

3. In the written statement filed by the petitioner, in response to the suit of the respondent, the petitioner placed reliance on a *Bilti*/Consignment Note 0129 No. 18649 dated 28th October, 2013.



Though the entire trial court record is not before this Court, learned Counsel are *ad idem* that the defendant had, in its written statement, sought to assert that the petitioner was relying on the said document, in its evidence, as representing goods carried by the petitioner on behalf of the respondent through BRL. The *Bilti* was, however, a photocopy.

4. A Local Commissioner was appointed to record the evidence in the matter. The Local Commissioner issued summons to Mr. Perminder Kaushik, Relationship Manager of BRL to appear before him on 21st April, 2018, as DW-2. Mr. Kaushik appeared before the Local Commissioner on 21st April, 2018, as directed and on enquiry, was informed that his evidence was required in connection with the aforesaid *biilti* dated 28th October, 2013 whereunder, the petitioner's goods had purportedly been transported.

5. The impugned order records the fact that on being informed about the nature of the evidence sought from him on 21st April, 2018, Mr. Perminder Kaushik (DW-2) sought a fortnight's time to examine the records, as the *Bilti* related to 2013. Learned Counsel for the respondent submits that the recording, in the impugned order dated 31st January, 2022, of Mr. Kaushik having sought a fortnight's time to examine the matter is incorrect, though they acknowledge that on 21st April, 2018, Mr. Kaushik did seek "some time" to look into the records as they were old.

6. It appears that the time within which the Local Commissioner



was to conclude evidence, was to expire on 25th April, 2018, the Local Commissioner was not willing to grant any extended period of time to Mr. Kaushik and to examine the records and tender evidence.

7. The matter was, therefore, fixed on 23rd April, 2018. The impugned order also records the fact that learned Counsel for the petitioner had submitted that, on 23rd April, 2018, he would be unavailable as he had to attend a matter in another Court and had, therefore, sought that the matter be listed on 4th April, 2018. The learned Local Commissioner, however, declined the request and fixed the matter on 24th April, 2018.

8. On 24th April, 2018, therefore, there was no appearance of any Counsel on behalf of the petitioner, though Mr. Yogesh Ahuja, Director of the petitioner was present. Mr. Ahuja concluded his defence evidence, but reserved his right to move an appropriate application for recalling of defence evidence, if necessary.

9. The Local Commissioner submitted his report to the Court on 25th April, 2018.

10. It is at this stage that the petitioner moved an application under Order XVIII Rule 17 read with Order XI Rule 14 read with Section 151 of the CPC, seeking permission to recall DW-2, so that the *Bilti* dated 28th October 2013 could be proved.

11. The impugned order dated 31st January 2022 rejects the request.



12. The learned ADJ has noted, in the impugned order, that the examination-in-chief of DW-2 did not make any reference to the aforesaid *Bilti* dated 28th October, 2013 and that, in his cross-examination, DW-2 had admitted the suggestion put by learned Counsel for the respondent that the original record of the *Bilti* was not available with his company. The request for tracing out the record relating to the said *Bilti* was, as the learned ADJ records in the impugned order, made by DW-2 in cross-examination and not in examination-in-chief. The application seeking recall of DW-2 was, however, made for recording of his further examination-in-chief and not further cross-examination. The learned ADJ has further noted, in the impugned order, that the *Bilti* dated 28th October, 2013 did not bear the name of the defendant or reflect the amount to which the *Bilti* purportedly related, as admitted by DW-1 in cross-examination.

13. For these reasons, the learned ADJ has deemed it appropriate to reject the application seeking recalling of DW-2.

14. I have heard Mr. J.S. Malik, learned Counsel for the petitioner and Mr. Amar Khera, learned Counsel for the respondent.

15. Mr. Amar Khera, learned Counsel for the respondent, has emphasized the fact that, on 28th October, 2013, Mr. Yogesh Ahuja had voluntarily closed the defense evidence. He also submits that a bare glance at the *Bilti*, for the proving of which Mr. Ahuja was being sought to be recalled into the witness box, reveals that it does not



support the case of the petitioner. He also relies on the findings of the learned ADJ and submits that the decision of the learned ADJ, not to recall DW-2 for re-recording of his evidence, cannot be said to suffer from any such infirmity and illegality as would justify interference by this Court under Article 227 of the Constitution of India.

16. A fair opportunity to represent one's case and lead evidence to support the case that one seeks to set up is the *sine qua non* of any democratic judicial process. If fair opportunity is not granted, a clear case for interference under Article 227 of the Constitution of India is made out.

17. In the present case, it is not in dispute that the first date on which DW-2 appeared before the Local Commissioner was 21st April, 2018. It was only on the said date that Mr. Kaushik was made aware of the nature of defence which was required to be tendered relating to the *Bilti* dated 28th October, 2013, on which the petitioner seeks to rely. The relevance of the *Bilti*, and whether it would support the case that the petitioner seeks to make out in response to the suit filed by the respondent, is an aspect which is foreign to the controversy in issue in the present case. It is for a party to select the documents on which he seeks to rely in judicial proceedings. For better or for worse, the petitioner placed reliance on the *Bilti* dated 28th October, 2013. The *Bilti*, as filed by the petitioner, was a photocopy. The petitioner sought to lead the evidence of DW-2 to prove the said *Bilti*. DW-2, as already noted, appeared before the Local Commissioner on 21st April, 2018, on which date he was informed that his evidence was required



to be recorded in connection with the *Bilti*. Mr. Kaushik, thereupon, pointed out that the *Bilti* was of five year's vintage and, therefore, sought some time to revert on the matter. The learned local commissioner condescended to grant just two days' time to Mr. Kaushik. Significantly though, the learned local Commissioner already declined the request to re-fix the matter on 24th April, 2018, despite his having been aware that on 23rd April, 2018, learned Counsel for the petitioner was not available, being held up elsewhere. The result was that, on 23rd April, 2018, the petitioner was not represented by Counsel. Mr. Yogesh Ahuja, Director of the petitioner appeared. No doubt, he submitted that he was closing his defence evidence, but, fortunately, for him, he reserved his right to move an application seeking recall of the witness, if necessary. It was thereafter that the application under Order XVIII Rule 17 read with Order XI Rule 14 read with Section 151 of the CPC was moved.

18. The learned local commissioner having granted just two days' time to Mr. Kaushik to clarify regarding the *Bilti* dated 28th October, 2013, despite Mr. Kaushik's submission that as the *Bilti* was more than five years old, further time would be required, I am of the opinion that the interests of justice would necessarily warrant grant of one opportunity to Mr. Kaushik to appear before the learned ADJ and tender evidence in the matter.

19. In view thereof, Mr. Perminder Kuashik, Relationship Manager of M/s. Best Roadways Ltd is directed to appear before the learned ADJ on 25th July, 2022. The learned ADJ would ensure that on the



said date, the evidence of DW-2 is recorded and if possible he is discharged on the same day.

20. It is clarified that in the event of DW-2 not being available on 25th July, 2022, the impugned order would stand restored and the right to lead evidence of DW-2 would stand closed.

21. This petition stands disposed of in the aforesaid terms with no order as to costs. Miscellaneous applications also stand disposed of.

JULY 4, 2022
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C.HARI SHANKAR, J



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