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

+ CM(M) 489/2022 and CM 25079/2022 (exemption)

SIRAJ KHAN

..... Petitioner

Through: Mr. Brahmanand Gupta, Adv.

versus

MOHD MANGE KHAN

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **25.05.2022**

1. This petition under Article 227 of the Constitution of India, assails an order dated 17th May, 2022, passed by the learned Rent Controller (“the learned RC”), whereby an application, moved by the petitioner under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) in RC/ARC 5342/2016 (*Mohd. Mange Khan v. Siraj Khan*) was dismissed. The petitioner was the respondent before the learned RC.

2. Given the limited nature of the controversy, we need not burden ourselves with the dispute between the parties. For the purposes of the present order, suffice it to state that, on 21st August, 2019, the evidence of the fourth witness of the respondent (the petitioner before the learned RC), PW-4 Yaseen, was recorded. Despite grant of opportunity, he was not cross-examined by the petitioner. The record of proceedings on 21st August, 2019 reads thus:



“PW4 .

Statement of Yaseen s/o Late Sh. Lal Khan aged about 65 years r/o 240-B, 20 Foota Road. Prem Nagar, Loni. Ghaziabad, U.P .

On SA

I tender my an evidence by way of an affidavit and the same is exhibited as Ex. PW4/A which bears my signature at point A and at point B. I rely upon the following document:-

(a) a photocopy of my election identity card is exhibited as Ex. PW4/A (OSR).

XXXXXXXX by Shri Deep Singh proxy counsel for plaintiff.

Nil. Opportunity given.

RO&AC

Sd.
NIYAY BINDU
SCJ-cum-RC NORTH WEST
ROHINI COURTS
DELHI
21/08/2019”

3. Thereafter, the suit proceeded, the petitioner’s witnesses were examined and cross-examined and the matter was finally heard. It was reserved for orders, to be pronounced at 4:00 PM on 17th May, 2022.

4. At 12:10 PM on the date when the judgment was to be pronounced, the petitioner moved an application under Order XVIII Rule 17 of the CPC, seeking recall of PW-4 Yaseen-whose evidence, as noted hereinabove, was closed on 21st August, 2019, after grant of



opportunity to cross-examine him, which was not availed.

5. Having moved the application, the petitioner chose to remain absent when the application was taken up by the learned RC at 4:05 PM. The impugned order notes that the application was taken up at 4:05 PM and that, despite repeated calls, no one appeared to pursue the application.

6. In these circumstances, the learned RC dismissed the application as a deliberate attempt to delay the proceedings, with costs of ₹ 4,000/-.

7. The present petitioner under Article 227 of the Constitution of India seeks to call, into question, this decision of the learned RC.

8. The petitioner has, in the petition, admitted the fact that the evidence of PW-4 was closed on 21st August, 2019. This candour is, however, sadly lacking in the manner in which para 5 of the petition refers to the proceedings of 21st August, 2019 which appears, *prima facie*, to be a deliberate attempt to misrepresent what happened that day.

“5. That however when the matter came back to trial court from mediation, the petitioner produced PW-4 when the counsel was not present and *Nil opportunity was given* to the respondent vide order dated 21.08.2019.”

(Emphasis Supplied)



9. The assertion, in para 5 of the petition, that “Nil opportunity was given” to the respondent on 21st October, 2019 is a deliberate misrepresentation of the proceedings which took place on the said date. A reading of the order reveals that what is stated, therein, is “Nil. Opportunity given.” This indicates that, despite grant of opportunity, the petitioner did not choose to cross-examine PW-4 and *not* that no opportunity was granted to cross-examine the said witness. This Court deprecates the manner in which para 5 of the present petition seeks to misrepresent the proceedings which took place on 21st August, 2019.

10. No attempt was made, till 12:10 PM on the date when the judgment in the matter was listed for pronouncement, i.e. on 17th May, 2022, to move any application seeking recall of the aforesaid witness whose evidence was closed on 21st August, 2019. The application was moved at 12:10 PM on 17th May, 2022, in full awareness of the fact that the matter was listed for pronouncement at 4:00 PM on the said date.

11. Having moved the application, the petitioner chose to remain absent when the application was called out for hearing at 4:00 PM.

12. Learned Counsel for the petitioner would seek to submit that the petitioner was not informed that the application would be heard at 4:00 PM and it was for that reason that he remained absent. This submission is, to say the least, disturbing. The application having been moved by the petitioner at 12:10 PM, and the petitioner being



well-aware of the fact that the matter was listed at 4:00 PM, if the petitioner chose to remain absent at that time, the absence was obviously deliberate, possibly with the hope that the matter would be adjourned and the proceedings would be protracted further.

13. The impugned order, passed at 4:05pm, also records the fact that, despite repeated calls, the petitioner did not turn up to prosecute the application filed by him at 12:10 PM on that date.

14. The learned RC has, therefore, correctly dismissed the application with costs.

15. This petition, in my view, is a classic example of the abuse of process of Court. It requires to be deprecated in the strongest possible terms.

16. As such, the petition is dismissed *in limine* with further costs of ₹ 25,000/-, which shall be paid by way of a crossed- cheque favouring the respondent, within a period of one week from today. These costs would be in addition to the costs of ₹ 4,000/- imposed by the learned RC.

17. Miscellaneous application is also disposed of.

C.HARI SHANKAR, J

MAY 25, 2022

r.bararia