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

+ CM(M) 622/2022, CM 29288/2022 & CM 29289/2022

PREM BABU Petitioner

Through: Mr. Raj Kumar, Adv.

versus

RAJEEV SHARMA Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **17.08.2022**

1. This petition under Article 227 of the Constitution of India assails the order dated 23rd May 2022 passed by the learned Additional District Judge (“the learned ADJ”) in CS 209/17 (*Rajeev Sharma v. Prem Babu*), whereby the learned ADJ has closed the petitioner’s right to lead defence evidence in the suit.

2. A perusal of the order-sheets reveals that three opportunities were granted to the petitioner to lead defence evidence. On 28th August 2019, the matter was renotified for 16th December 2019, for the petitioner to lead defence evidence. He failed to do so. On 16th December 2019, the matter was renotified for 23rd March 2020, but could not be taken up owing to the intervening Covid-19 pandemic. The matter was, thereafter, taken up on 25th September 2021 on which date, too, defence evidence was not forthcoming.

3. The matter was renotified for 3rd December 2021.



4. On 3rd December 2021 again defence evidence was not forthcoming.

5. The learned ADJ has, therefore, noted that as many as three opportunities were granted to the petitioner for leading defence evidence, but the petitioner defaulted repeatedly. Costs of ₹ 1,000/-, which had been imposed on 25th September 2021 were also not paid. Additional costs of ₹ 2,000/- imposed on 3rd December 2021 have also not been paid.

6. No doubt, the right to lead defence evidence is a valuable right. Having said that, the right of expeditious trial is equally sanctified. Where this Court, exercising jurisdiction under Article 227 of the Constitution of India, cannot interfere with the discretionary orders passed by the Courts below, especially where the discretion is correctly exercised. Any interference by the High Court in such cases is bound to send a wrong message and it would also result in shaking the confidence of the district judiciary in exercising the powers vested in them freely and fearlessly.

7. Article 227 of the Constitution of India cannot be used as a mercy petition or as an avenue to rectify the defaults committed before the Courts below.

8. The learned ADJ has, in the present case, extended as many as three opportunities to the petitioner to lead defence evidence. On the



petitioner defaulting on all three occasions, the learned ADJ has closed the defence evidence. There is nothing even remotely arbitrary, much less perverse, in the manner in which the learned ADJ exercised the discretion vested in her.

9. No case exists, therefore, for this Court to interfere under Article 227 of the Constitution of India.

10. The petition is, accordingly, dismissed. The miscellaneous applications are also disposed of.

AUGUST 17, 2022
r.bararia

C. HARI SHANKAR, J



न्यायमेव जयते