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

+ CM(M) 648/2022, CM APPL. 30134/2022 (stay) and CM APPL. 30135/2022 (Exemption)

JATINDER SINGH

..... Petitioner

Through: Mr. Naginder Benipal, Mr. Abhijeet Vikram Singh, Ms. Harithi Kambiri, Mr. Ankit Siwach and Ms. Kavita, Advs.

versus

MAHANT AYUDHYA DASS & ANR. Respondents

Through: Mr. Kuljeet Rawal, Mr. Vikram Alung and Mr. Aditya Joshi, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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18.07.2022

1. The impugned order, dated 1st June 2022, passed by the learned Additional District Judge (“the learned ADJ”) in Suit 12803/2016 (*Mahant Ayudhya Dass & Anr. v. Pritam Singh & Ors*), rejects an application filed by the petitioner under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC), in the following terms:

“Suit No.12803/16

Mahant Ayudhya Dass & Anr. Vs. Pritam Singh & Ors.



01.06.2022

Present: Counsel Sh. Kuljeet Rawal for plaintiffs.

Counsel Ms. Harithi for all the defendants.

An application u/o 9 Rule 7 CPC is filed on behalf of the defendants along-with copies of documents with list of documents. Copies supplied.

Written arguments have been filed on behalf of the plaintiffs.

Put up for orders on the application u/o 9 Rule 7 CPC at 4 pm.

Sd.

At 4 pm.

Present: None.

Arguments were already heard on the application u/o 9 Rule 7 CPC.

It is submitted in the present application that the absence of the defendants on the last date of hearing i.e. 13/05/2022 was neither intentional nor deliberate as the counsel for the defendants was in personal difficulty and the e-mail for the same requesting to appear through VC was made on the officials mail ID of this court. However, due to bad network, counsel for the defendants was not able to connect after various attempts.

It is further submitted that the present application is moved bonafide and it is prayed that the order dated 13/05/2022 whereby the right of the defendants to cross examine and declaring the defendants as ex-parte be recalled.

Ld. Counsel for the plaintiffs has opposed the present application and has submitted that the present application has been moved with malafide intention just to delay the proceedings of the case. It is further submitted that for the cross examination, the physical appearance of the witness of the defendants was necessary and the same was not possible



through VC and even the defendants have not paid the cost.

Perusal of the record shows that on 05/03/2022 when the case was fixed for DE, adjournment was sought by proxy counsel for the defendants on the ground that the main counsel was not present due to personal difficulty. Therefore, adjournment was given subject to cost of Rs.1000/- but on the next date on 26/03/2022 again adjournment was sought on behalf of the defendants as the witness was stated to be not well. Therefore, adjournment was given subject to further cost of Rs.2,000/-.

On the next date of hearing i.e. 07/04/2022, affidavit of the DW-1 was filed which was without attestation and on the next date of hearing i.e. 22/04/2022 the defendants instead of filing fresh affidavit of the DW-1 has filed the application u/s 151 CPC for recalling the order dated 07/04/2022 closing of the evidence of the DW-1. The said application was disposed of by permitting the defendants to file fresh affidavit subject to cost of Rs.7,000/- which also included the previous cost and it was also noted that the evidence of the DW-1 was never closed. It appears that the defendant instead of filing his affidavit in evidence intentionally filed the above application to delay the proceedings of the case.

On the next date of hearing i.e. 13/05/2022, the defendants neither paid the costs nor appeared in the present case. In the said order sheet, it was observed that the request sent by the defendants to conduct the proceedings through e-mail was rejected as the said request was not sent in advance to the opposite party and the witness was also not present physically in the court for the purpose of evidence. It was also specifically observed that the case was old one and considering the conduct of the defendants, no further opportunity was granted to the defendants for leading remaining DE.

In the present application also, no specific reason has been given to show that the defendant was prevented by any sufficient cause from appearing in the present case to lead evidence. As already discussed above, the conduct of the defendant shows that he is not interested in leading evidence despite several opportunities granted for the same and rather wants to delay the proceedings of the case. Hence, the present



application is dismissed.

Put up for final arguments on 05/07/2022.

Sd.”

2. Mr. Naginder Benipal, learned Counsel for the petitioner, does not dispute any of the observations in the afore-extracted order. His only submission is that the absence of attestation, on the affidavit of DW-1, as originally filed, took place because when the application was filed by the earlier counsel in 2019, there was a strike in the Trial Court, as a result of which the affidavit could not be attested.

3. That does not, however, purge the conduct of the petitioner. A reading of the afore-extracted order speaks for itself. The petitioner has been repeatedly recalcitrant, first in filing the affidavit of DW-1, thereafter in complying with the direction of the Court to pay costs, thereafter in appearing before the Court and, finally, after the duly attested affidavit of DW-1 was permitted to be taken on record, making the witness available for recording of evidence.

4. No exception can be taken to the impugned order as would merit interference by this Court under Article 227 of the Constitution of India.

5. The petition is, accordingly, dismissed. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

JULY 18, 2022/r.bararia