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

+ CM(M) 650/2022 & CM APPL. 30177/2022

LAXMAN DASS BHATIA Petitioner
Through: Mr.Adhirath Singh,
Mr.Raymon Singh, Ms.Shreya Monga and
Mr.Fazl Askari, Advs.

versus

PARVEEN CHATTERJEE Respondent
Through: Mr. Ranjay N. and Mr. Gulwant
Singh, Advs.

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

JUDGMENT (O R A L)

% **29.07.2022**

1. This petition, under Article 227 of the Constitution of India, assails an order dated 30th May, 2022, passed by the learned Civil Judge in Misc SCJ 158/19, which was an application filed by the petitioner, as the plaintiff before the Ld. Civil Judge, seeking an opportunity of hearing before orders were passed by the learned Civil Judge on the application of the respondent under Section 340 of the Code of Criminal Procedure, 1973.

2. It is not necessary to delve into the matter in any great detail. Para 5 of the impugned order discloses that Court notice, on the application of the respondent under Section 340 CrPC was issued to the petitioner for 11th March, 2022. There was no appearance on 11th March, 2022. On the said date, therefore, the learned Civil Judge heard the respondent on the Section 340 application and reserved



orders, to be pronounced on 12th May, 2022.

3. In the interregnum, i.e. between 11th March, 2022 when orders were reserved and 12th May, 2022 when orders were to be pronounced on the Section 340 CrPC application, the petitioner preferred an application before the learned Civil Judge on 12th April, 2022, stating that, as the petitioner was residing abroad, he was not able to follow up the matter properly and praying, therefore, that he be heard before orders were passed on the respondent's Section 340 application.

4. The impugned order dated 30th May, 2022 rejects the said application. In doing so, the learned Civil Judge has quoted extensively from the judgment of the Supreme Court in ***Pritish v. State of Maharashtra***¹, to opine that there no vested right of hearing, by the alleged accused, in an application under Section 340 CrPC.

5. To my mind, the reliance on the said decision is really off the point. The fact of the matter was that a notice of hearing was issued by the learned Civil Judge, to the petitioner, to address arguments on the Section 340 application on 11th March, 2022. The petitioner being absent on the said date, the respondent was heard and orders were reserved for 12th May, 2022. It is not as though the petitioner approached the learned Civil Judge after 12th May, 2022. Exactly a month prior to the date when orders were to be pronounced on the Section 340 application, the petitioner moved an application, merely seeking an opportunity of being heard before orders were passed in the

¹ (2002) 1 SCC 253



Section 340 application.

6. In my considered opinion, the principles of *audi alteram partem* would have required the learned Civil Judge to afford an opportunity of hearing to the petitioner, especially as there was a month left before she would pronounce orders on the Section 340 application.

7. In not doing so, I am of the opinion that the principles of natural justice stood violated.

8. Learned Counsel for the respondent submits, fairly, that this matter could be disposed of by fixing a particular date when the petitioner could advance arguments on the Section 340 CrPC application and not allowing any adjournment.

9. Accordingly, this petition is disposed of by setting aside the impugned order and directing the petitioner to appear before the learned Civil Judge on 8th August, 2022, to advance submissions on the respondent's Section 340 CrPC application. Any reply to the application, should the petitioner deem it necessary, would be filed within five days from today.

10. Learned Counsel for the petitioner undertakes on behalf of his client that he would not seek any adjournment of the hearing on 8th August, 2022.

11. It is made clear that this Court has expressed no opinion on the



merits of the Section 340 CrPC application.

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C.HARI SHANKAR, J

JULY 29, 2022/kr

