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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 733/2022 & CM APPL. 32797/2022, CM APPL. 32798/2022

RAJ RANI AND ANR Petitioners
Through: Mr. Deepender Hooda and Mr. Varun Hooda, Advs.

versus

SUMITRA PARASHAR AND ANR Respondents
Through: None

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

J U D G M E N T (O R A L)

% **28.07.2022**

1. This writ petition, under Article 227 of the Constitution of India, assails order dated 10th December 2021, passed by the learned Additional District Judge (“the learned ADJ”) in CS DJ ADJ 15466/2016 (*Raj Rani & Anr. v. Sumitra Parashar & Anr.*), which reads as under:

“CS DJ ADJ 15466/16
RAJ RANI vs. SUMITRA PRASAR

10.12.2021

Present: Sh. Rahul Hans, Ld. Proxy Counsel for plaintiff.
Ms. Amrit Kaur, Ld. Counsel for defendant
along with defendant.

Fresh Vakalatnama has been filed on behalf of plaintiff. Ld. Proxy Counsel for plaintiff requested for one more opportunity to examine the witness stating that plaintiff has engaged new Counsel recently. Request of the Ld.



Counsel for plaintiff is opposed by Ld. Counsel for defendant stating that plaintiff is deliberately lingering on the matter. Ld. Counsel for defendant also relied her objection upon the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 7532 of 2011 titled as "*Shiv Cotex Vs. Tirgun Auto Plast Private Limited And Others.*"

I have considered the submissions. Perusal of file reveals that so many opportunities have already been granted to plaintiff to complete PE. On previous date, the cost was also imposed upon plaintiff for giving a last and final opportunity but despite that neither cost has been paid nor any steps were taken by the plaintiff to lead PE. In view of facts and circumstances and previous ordersheets. Court finds that plaintiff is deliberately lingering on the matter and is not interested to take steps to lead PE. Hence, PE is closed.

Defendant is directed to take appropriate steps to file affidavit. Put up for DE on 13.01.2022.

In previous ordersheet, inadvertently DE was mentioned instead of PE due to typographical error. Same is corrected accordingly.

Sd./-
(Dr. Jagminder Singh)
ADJ-03 /South West
Dwarka/New Delhi
10.12.2021"

2. Consequent to the direction issued by this Court on 27th July 2022, the entire order sheets, from the date when recording of evidence commenced, have been handed over by learned Counsel for the petitioners across the Bar. The same are taken on record.

3. The impugned order closes the right of the petitioner, as the plaintiff in the suit before the learned ADJ, to lead further evidence, on the ground that several opportunities had been granted to the



petitioner to complete the exercise of recording of PE.

4. It is not necessary to set out in detail the entire course of proceedings before the learned ADJ, regarding recording of evidence of the petitioner, as plaintiff.

5. One may commence the recital from 20th February 2020, on which date PW-2, Dheeraj Kumar, Record Keeper, from office of Sub-Registrar-V, Mehrauli was examined, cross-examined and discharged. Learned Counsel for the petitioner on the said date sought an adjournment “for the remaining PE”. Learned Counsel for the respondent raised an objection to the number of witnesses cited by the petitioner. He submitted that the petitioner had furnished a list of 24 PWs, and that it was not necessary to examine all the PWs.

6. On the next date of hearing, i.e. 26th February 2020, the petitioner gave up twelve of the witnesses in his list and submitted that he sought to lead evidence only of the witnesses at Serial Nos. 5,6,7,11,12,13,14,16 and 17, who were official witnesses. An application for summoning the said official witnesses was tendered and the petitioner was directed to take steps for summoning the aforesaid witnesses. The matter was re-notified for 23rd March 2020.

7. Thereafter, the matter was adjourned on six occasions owing to the intervention of COVID-19 pandemic. It was taken up, thereafter, on 25th March 2021.

8. The order sheets of the proceeding, on and after 25th March



2021, read thus:

Proceeding dated 25th March 2021

“CS DJ ADJ 515466/2016
Raj Rani Vs. Sumitra Prasar
CNR No. DLSWOI-000358-2016

25.03.2021

File taken up today on application moved on behalf of plaintiff.

Present: Sh. Ravinder Kumar, Ld. Proxy Counsel for plaintiff.

An application is moved on behalf of plaintiff for summoning of the witness i.e. concerned official from Syndicate Bank, INA Colony Branch, New Delhi and concerned official from Central Bank of India, Kharkhoda Branch, Sonipat, Haryana. Heard. In view of the facts mentioned in the application, same is allowed. Let the witnesses as mentioned in the application be summoned on filing of PF/RC for next date already fixed i.e. 12.04.2021. Diet money to the witnesses shall be given at the spot.”

Proceeding dated 12th April 2021

“CS DJ ADJ 15466/16
RAJ RANI Vs. SUMITRAPRASAR

12.04.2021

Present: Sh. Siddharth Arora, Ld. Counsel for plaintiff.
Ms. Amrli Kaur Oberoi, Ld. Counsel for defendant.

PW Sh.Srujeet Singh, Branch Manager, Canara Bank, INA Branch, New Delhi previously known as Syndicate Bank is appeared physically before Court and seeks time to trace residence record. Heard. Time is granted. Put up for PE on 25.08.2021.”

Proceeding dated 25th August 2021



“25.08.2021

Present: None for plaintiff.
Defendant no.2 in person.

Matter is at the stage of PE and same is also more than 5 years old. Hence, short date is given and court notice be issued to plaintiff and put up for PE on 15.09.2021. Plaintiff is further directed to take appropriate steps to call the witnesses.”

Proceeding dated 15th September 2021

“15.09.2021

Present: Sh. Gaurav Kumar proxy counsel for Sh. Laiit Gupta for plaintiff.
Defendant No. 2 in person.

Ld. Presiding officer is on leave today.

Application for summoning of witnesses filed.

As per direction of Ld. Presiding Officer, matter be adjourned for purpose already fixed/further proceeding on 30.09.2021.”

Proceeding dated 30th September 2021

“30.09.2021

Matter is taken up through video conferencing via cisco Webex.

Present: Sh. Siddharth Arora, Ld. counsel for plaintiff.
Ms. Amrit Kaur Oberoi, Ld. counsel for defendants.
Defendant no.2 is physically present in Court.

An application is moved on behalf of plaintiff for summoning of witness. In view of the facts mentioned in the application, same is allowed. Let witnesses as mentioned in the application be summoned along with relevant record on filing of PF for 29.10.2021.



Plaintiff is directed to take appropriate steps within time to secure the presence of witnesses on next date of hearing.”

Proceeding dated 29th October 2021

“29.10.2021

Present: Sh. Priyansh, Ld. Proxy Counsel for plaintiff.
Ms. Amrit Kaur Oberoi, Ld. Counsel for defendant.

No PW is present. PW from Syndicate Bank is not present despite service. Ld. Proxy counsel for plaintiff stated that main counsel is not able to come today as he is suffering from Dengue infection. Hence, at request, matter is adjourned for PE for next date of hearing. Let formal witnesses regarding record be summoned as 3-4 witnesses at a time on filing of PF for 18.11.2021.”

Proceeding dated 18th November 2021

“18.11.2021

Present: Sh. Vineet Dubey, Ld. Counsel for plaintiff
along with Ms. Ritika Manchanda.

Ms. Amrit Oberoi, Ld. Counsel for defendant.

No PW is present.

Fresh Vakalatnama has been filed on behalf of plaintiff.

Ld. Counsel for plaintiff stated that he is engaged in some other matter and seeks one more opportunity to summon the witness. Ld. Counsel for defendant strongly opposed the request stating that the plaintiff is deliberately lingering on the matter and so many opportunities have already been granted but plaintiff is not taking steps to summon all the witnesses and therefore, requested to close the opportunity for pleading witnesses.

In the interest of justice, last and final opportunity is granted to comply the previous order and the cost of



Rs.5,000/- to be given to the opposite party.

Put up for PE on 10.12.2021.”

9. Thereafter, on 10th December 2021, the impugned order came to be passed.

10. A reading of the aforesaid orders reveals that opportunities for filing of PF/RC, so that the official witnesses could be summoned, were granted on 26th February 2021, 25th March 2021, 25th August 2021, 30th September 2021, 29th October 2021 and 18th November 2021, before PE was closed on 10th December 2021.

11. In view of the aforesaid, it cannot be said that the decision of the learned ADJ to close PE suffered from any irregular exercise of jurisdiction or was otherwise perverse, so as to invite correction by this Court in exercise of the superintending jurisdiction vested in it by Article 227 of the Constitution of India which, as is well known, is limited and circumscribed.¹

12. No occasion, therefore, arises for this Court to grant any relief to the petitioner under Article 227 of the Constitution of India.

13. Having said that, learned Counsel for the petitioner emphasises the fact that as many as ten PWs remained to be examined and that, if their entire evidence is left out, the case of the petitioner would be

¹ Refer *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524; *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97; *Garment Craft v. Prakash Chand Goel*, 2022 SCC OnLine SC 29; *Ibrat Faizan v. Omaxe Buildhome Private Limited*, 2022 SCC OnLine SC 620.



rendered completely futile. He, therefore, submits that his client is willing to be put to terms if the evidence of the witnesses is directed to be led.

14. He has also submitted that steps had, in fact, been taken by his client in respect of the two of the official witnesses, pursuant to which, one of the official witnesses at Serial No. 5 of Part-C of the list of witnesses, tendered by his client, to which reference has been made in the impugned order dated 26th February 2020, had actually appeared on 12th April 2021.

15. The direction by the learned ADJ, starting from 26th February 2020, was for the petitioner to take steps to summon all the remaining official witnesses.

16. Undoubtedly, there has been recalcitrance and some degree of negligence on the part of the petitioner in taking steps to summon the official witnesses which is why, as already noted, this Court is not able to provide succour to the petitioner under Article 227 of the Constitution of India. Nonetheless, in view of the prejudice that the petition may suffer if ten witnesses are left out, the petitioner is permitted to move an appropriate application before the learned ADJ, bringing the aforesaid facts to his notice and seeking permission to lead the evidence of the remaining PWs.

17. Any such application, if advised, should be moved on the next date of haring i.e. 30th July 2022.



18. If any such application is moved, entire discretion is reserved with the learned ADJ to take a decision thereon.

19. Needless to say, any such decision being taken would also deal with the grounds urged by the petitioner for permission to adduce evidence of the remaining witnesses.

20. This order is being passed only *ex debito justitiae* so as to ensure that no miscarriage of justice takes place.

21. Reserving such limited liberty to the petitioner, this writ petition stands disposed of.

Copy of the order be given *dasti* to learned Counsel for the petitioner under the signature of the Court Master.

C. HARI SHANKAR, J.

JULY 28, 2022

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