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

+ CM(M) 893/2022 & CM APPL. 38197/2022

M/S. ELITE PACKAGING & ANR. Petitioners

Through: Mr.Kumar Utkarsh and
Mr.Manoj Kumar, Advs.

versus

M/S. VASU POLYMERS INDIA PVT. LTD. Respondent

Through: Mr.Kislay Komal and
Mr.Vikash Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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

% **01.09.2022**

1. This petition under Article 227 of the Constitution of India assails orders dated 26th March 2022, 9th May 2022 and 10th May 2022 passed by the learned District Judge (Commercial Courts) (“the learned Commercial Court”) in CS (Comm) 275/20 (*Vasu Polymers India Pvt. Ltd. v. Elite Packaging & Ors.*). The petitioner was the defendant in the said suit and the respondent was the plaintiff.

2. Summons in the suit were issued on 20th November 2020. Written statement, accompanied by affidavit of statement of truth, was filed by the petitioner on 30th January 2021. Affidavit of admission and denial, as required by Order XI Rule 4(1)¹ of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015 was not filed by the petitioner. The matter was thereafter listed before

¹ 4. **Admission and denial of documents. –**

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the court.



the learned Commercial Court on 19th March 2021, 30th April 2021, 6th September 2021, 15th November 2021, 12th January 2022 and 26th March 2022. As no affidavit of admission and denial, on the part of the petitioner, was forthcoming, the learned Commercial Court, *vide* order dated 26th March 2022, closed the right of the petitioner to file affidavit of admission and denial. This decision constitutes the first decision under challenge in the present proceedings.

3. Mr. Kumar Utkarsh, learned Counsel for the petitioner has no ready explanation as to why no affidavit of admission and denial was filed till 26th March 2022, despite summons having been issued to the petitioner as far back as on 20th November 2020. He seeks, predictably, to capitalise on the existing COVID-19 pandemic and contends that both the petitioner as well as his Counsel were in Bombay.

4. That, in my view, is completely insufficient as a ground to explain away the inaction, on the part of the petitioner, in filing affidavit of admission and denial in support of the written statement which had been tendered by him as far back as in January 2021.

5. Accordingly, no jurisdictional or other infirmity, as could justify interference by this Court under Article 227 of the Constitution of India, can be said to exist in the decision, of the learned Commercial Court, in its order dated 26th March 2022, to close the right of the petitioner to file affidavit of admission and denial. The decision is therefore upheld.



6. The second challenge of the petitioner, in the present petition, pertains to closure of the petitioner's right to cross examine the respondent's witnesses PW-1 and PW-2.

7. The record of proceeding reveals that, on 26th March 2022, after closing the right of the petitioner to file affidavit of admission and denial and treating the pleadings in the matter to have been completed, the learned Commercial Court listed the matter for plaintiff's evidence (PE) on 9th May 2022 and 10th May 2022, for defence evidence (DE) on 11th May 2022 and 12th May 2022 and for final arguments on 17th May 2022. As such, the first date fixed for PE was 9th May 2022.

8. On 9th May 2022, examination in chief of PW-1 was concluded. The learned Commercial Court observed that, as there was no appearance on behalf of the petitioners-defendants, the right of cross-examination of PW-1 was closed, treating it as a case in which "nil" opportunity to cross-examine PW-1 was availed. Part examination in chief of PW-2 was conducted and the matter was listed for continuation of examination-in-chief of PW-2 on 10th May 2022.

9. On 10th May 2022, learned Counsel who was prosecuting the proceedings on behalf of the petitioners was not present. An application was moved by the Counsel who appeared on his behalf, seeking four weeks' adjournment on the ground of the unfortunate demise of the mother of learned Counsel for the petitioners on 24th April 2022. Additionally, extension of time for filing affidavit in



evidence of the defence witnesses, whose evidence the petitioner desired to lead, was also sought.

10. The learned Commercial Court, observing that commercial suits were required to be proceeded with in an expeditious fashion, granted one more last and final opportunity to the petitioner to file defence evidence and to cross examine PW-2. The matter was re-notified for the very next day i.e. 11th May 2022. On 11th May 2022, the Counsel who had appeared on 10th May 2022 on behalf of the main Counsel sought an adjournment on the ground that, as the mother of the main Counsel had expired and he was residing in Bombay, it had not been possible for him to attend Court.

11. This request has been rejected by the learned Commercial Court, again reiterating the necessity for expedition in proceedings dealing with commercial suits and the request of the petitioners for further opportunity to cross examine PW-2 was rejected. Accordingly, PE was closed. The matter was directed to be listed for DE on 12th May 2022.

12. Mr. Kislay Komal, learned Counsel for the respondent sought to justify the decision of the learned Commercial Court to close PE by emphasising the necessity for expeditious trial in commercial suits.

13. Undoubtedly, commercial suits are required to be expeditiously tried and decided. That, indeed, is the mandate of the Commercial Courts Act and the very *raison d'être* of the fashioning of a distinct and different protocol, by the said legislation, to deal with commercial



litigations.

14. That said, however, a reasonable opportunity to the parties to represent their case is the *sine qua non* of every fair and judicious legal proceeding. Be it a commercial suit or a non-commercial suit, parties must be given reasonable opportunity to represent themselves and prosecute the case that they seek to canvass.

15. The manner in which the learned Commercial Court has dealt with the right of the petitioners to cross examine the defendant's witnesses PW-1 and PW-2 cannot, in my view, sustain the scrutiny of Article 227 of the Constitution of India.

16. The learned Commercial Court does not dispute the fact that the mother of the arguing Counsel for the petitioners in fact expired on 24th April 2022. That, even by itself, explains the absence of learned Counsel for the petitioners on 9th May 2022, 10th May 2022 and 11th May 2022. When it was informed, to the learned Commercial Court on 10th May 2022, that the mother of the learned Counsel for the petitioner had expired on 24th April 2022, it was, in my considered opinion, a trifle unreasonable on the part of the learned Commercial Court to renotify the matter for the very next day and, on 11th May 2022, proceed to close the petitioner's evidence.

17. That, in my opinion, cannot be treated as meeting the requirement of grant of reasonable opportunity to the petitioners to prosecute their cause.



18. Learned Counsel for the respondent has very fairly agreed to the petitioners being given one opportunity to file DE and to cross examine PW-1 and PW-2 on 7th October 2022, when the matter is next listed.

19. Accordingly, a last and final opportunity is granted to the petitioners to file the list of defence witnesses, the affidavit in evidence of the defence witnesses as well as their affidavits-in-evidence and to cross examine PW-1 and PW-2, on the next date on which the matter is listed before the learned Commercial Court i.e. 7th October 2022. No adjournment would be granted to the petitioner for the said purpose on that date and the learned Commercial Court is requested to ensure that the proceedings continue with all due expedition, a consideration of which the learned Commercial Court is clearly acutely conscious.

20. The petition stands disposed of in the aforesaid terms with no orders as to costs.

21. Pending applications, if any, do not survive for consideration and are also disposed of.

C.HARI SHANKAR, J

SEPTEMBER 1, 2022/kr