

\$~1 (Appellate)

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

+ CM(M) 1049/2022 and CM 43037/2022

ADLEC POWER PVT. LTD. Petitioner
Through: Mr. Aditya Dhar, Adv.

versus

APEX HOMES PVT. LTD. & ORS. Respondents
Through: Mr. P.M. Aggarwal, Adv.

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

% **J U D G M E N T (O R A L)**
14.10.2022

1. The order dated 7th September 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS DJ 219/2017 (*Adlec Power Pvt Ltd v. Apex Homes Pvt Ltd*), under challenge in the present petition under Article 227 of the Constitution of India, closes the right of the petitioner, as the plaintiff in the suit, to lead PE (plaintiff evidence).

2. The sequence of dates, in the aforesaid context, commences from 29th January 2020, when an application filed by the respondents, as the defendants in the suit, under Order VIII Rule 10¹ of the Code of Civil Procedure, 1908 (CPC), was rejected. The learned ADJ directed the matter to be adjourned to 27th May 2020 for recording of PE.

¹ 10. **Procedure when party fails to present written statement called for by Court.** – Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

3. In the interregnum, COVID-19 intervened, and functioning of the Courts was compromised from 27th May 2020 till 23rd March 2021.

4. On 23rd March 2021, the petitioner filed applications before the learned ADJ for change of the petitioner and substitution of its Authorized Representative, as the petitioner had, *vide* order dated 9th August 2019, passed by the learned Company Law Tribunal, Mumbai merged with M/s. Novateur Electrical & Digital Systems Pvt Ltd (“Novateur”).

5. Said applications were allowed on 8th March 2022, and the petitioner was directed to lead PE.

6. Before the next date of hearing, the petitioner changed Counsel, as a result of which the affidavit of PW-1, the sole witness whose evidence the petitioner sought to lead, was not filed.

7. This resulted in the passing of the impugned order by the learned ADJ on 7th September 2022, closing the petitioner’s right to lead PE.

8. Though the petitioner cannot satisfactorily explain the entire period of delay from 27th May 2020 till 7th September 2022, or why it took the petitioner over a year and a half from the merger with Novateur to apply to the learned ADJ in that regard, nonetheless, given the fact that, for close on two years functioning of Courts was

affected by the COVID-19 pandemic, the petitioner ought, in my opinion, to be permitted to lead the evidence of its witness subject to terms.

9. Subject, therefore, to the petitioner paying costs of ₹ 25,000/- to the respondent on or before the next date of hearing, by way of a crossed cheque/demand draft, the petitioner shall be permitted to lead the evidence of PW-1 on the date when the matter is next listed before the learned ADJ.

10. The impugned order would stand set aside/quashed to the said extent.

11. The petition stands allowed in the aforesaid terms. Miscellaneous applications, if any, do not survive for consideration are accordingly disposed of.

C.HARI SHANKAR, J

OCTOBER 14, 2022

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