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

+ CM(M) 1107/2022 & CM APPL.44993/2022, CM
APPL.44994/2022

SURENDER SINGH SETHI Petitioner

Through: Mr.Michael Peter, Adv.

versus

M/S AMRIT SEAIR EXPRESS PVT. LTD. & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

17.10.2022

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1. By order dated 2nd August 2022, the learned District Judge (Commercial Court) agreed to the request of the petitioner, as Defendant 6 in CS (Comm) 95/19 (*M/s Amrit Seair Express Pvt. Ltd. v. M/s Cargo Linkers*), to defer the opportunity to cross examine PW-1 subject to payment of costs of ₹ 5,000/- to the respondent-plaintiff. The matter was re-notified for 5th September 2022.

2. As the said costs had not been deposited by the petitioner, on the next date of hearing, i.e. 5th September 2022, the learned Commercial Court queried of learned Counsel for the petitioner as to whether he was ready to pay the costs. On learned Counsel answering in the negative, the learned Commercial Court closed the right of the

petitioner to cross examine PW-1.

3. This petition under Article 227 of the Constitution of India assails the aforesaid orders dated 2nd August 2022 and 5th September 2022 passed by the learned Commercial Court.

4. Quite obviously, there is no infirmity in either of the orders as would justify this Court interfering in the matter. The petitioner, is to quote the classic adage, penny wise pound foolish. Owing to the recalcitrance of the petitioner in depositing costs of ₹ 5,000/- – which cannot be said to be punitive in any sense of the expression, the petitioner forfeited his right to cross examine PW-1.

5. The petitioner has now taken up the resources and the time of this Court by assailing the aforesaid orders by means of the present petition.

6. This petition is, according to me, an abuse of Article 227 of the Constitution of India.

7. Though the petition would deserve to be dismissed outright, keeping in mind the interests of justice and the necessity to discourage such adventurous litigation, this Court sets aside the impugned order dated 2nd August 2022 and 5th September 2022, subject, however, to the petitioner, paying to the respondent, enhanced costs of ₹ 10,000/- to learned Counsel for the respondent on the next date of hearing i.e. 31st October 2022. The said amount would include the cost ₹ of 5,000/- imposed by the learned Commercial Court. In other words,

the petitioner would be required to deposit only ₹ 10,000/ -, for being provided the opportunity to cross examine PW-1.

8. This petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

OCTOBER 17, 2022/kr

