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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1135/2022 &CM APPL. 45796/2022, CM APPL.
45797/2022

ALLCARGO LOGISTICS LTD. Petitioner
Through: Mr. Vivek Gupta, Mr. Saket
Agarwal, Mr. Advait Ghosh and Mr. Ankit
Verma, Advs.

versus

M/S. SHARA & ORS. Respondents
Through: Mr. Sandeep Prabhakar and Mr.
Vikas Mehta, Advs. for R-1

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

ORDER (ORAL)
20.10.2022

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1. The issue in this petition is brief and, with consent of learned Counsel for the parties, is being disposed of.
2. CS DJ ADJ 16258/2016 was instituted by the respondents against, *inter alia*, the petitioners, who were Defendants 8 to 11 therein.
3. Affidavit in evidence of PW-1 was filed in October 2016 and a copy of the said affidavit in evidence was tendered to the defendants on 25th April 2019.

4. Cross examination of PW-1 was initially conducted by Defendants 2 to 7. Prior thereto, it appears that the matter was adjourned on seven occasions. Ultimately, Defendants 2 to 7 commenced and concluded cross examination of PW-1 on 4th June 2022. Thereafter, the present petitioners, as Defendants 8 to 11, were given an opportunity to cross examine PW-1.

5. According to the petitioners, they were unable to complete cross examination of PW-1 on 4th June 2022 and requested for a further opportunity to complete the cross examination which was declined. The learned ADJ proceeded to close cross examination of PW-1 on 4th June 2022.

6. In the circumstances, the petitioners moved an application seeking permission for further opportunity to cross examine PW-1. The said application stands rejected by the impugned order dated 21st September 2022.

7. In the impugned order, the learned ADJ has termed the petitioners' application as "frivolous and vexatious" and filed with a view to "misuse the process of law". Following these declamations, the learned ADJ observed thus, to justify the decision to reject the petitioners' application:

"An opportunity had been given to the Ld. Counsel for defendants no. 8 to 11 to cross examine PW-1 on 04.06.2022. Thereafter, the witness PW-1 was duly cross examined on behalf of defendants no. 8 to 11 and thereafter, the witness was discharged. However, again today, a request has been made to cross examine the said witness, even though ample

opportunities have already been given and in fact, the witness PW-1 has already been cross examined. The Ld. Counsel has not pointed out any new fact that has been discovered after such cross examination. The mere substitution of an AR of a corporate entity would be no ground to keep reopening the cross examination of PW-1. Therefore, the said application is dismissed with costs of Rs. 3,000/- to be deposited with DLSA.”

8. To a query from the court as to how the learned ADJ could have observed that ample opportunities had been given to the petitioners to cross examine PW-1, learned Counsel for the respondents, while acknowledging that the first date for cross examination of PW-1 by the petitioners, following cross examination of PW-1 by Defendants 1 to 7, was indeed 4th June 2022, submits that the learned ADJ might probably have entered the above observation because of the seven dates on which the matter was adjourned prior to 4th June 2022.

9. Needless to say, the petitioners cannot be held responsible for the said adjournments. Nor can it be said that they had any opportunity to cross examine PW-1, as the cross examination of PW-1, by Defendants 1 to 7, concluded only on 4th June 2022. It was only thereafter that, in the normal course of proceedings, Defendants 8 to 11 i.e. the present petitioners, would have an opportunity to cross examine PW-1.

10. As such, in fact, the first opportunity granted to the petitioners to cross examine PW-1 was on 4th June 2022.

11. The observation, in the impugned order, of the learned ADJ,

that “ample opportunities had already been given” to the petitioners to cross examine PW-1 is, therefore, erroneous on facts.

12. The cross examination of PW-1 by the petitioners having commenced only on 4th June 2022, I am of the opinion that the learned ADJ was not justified in rejecting the petitioners’ request for further cross examination of PW-1 on the very next date of hearing i.e. 21st September 2022.

13. The present case cannot be equated with one in which, in normal course, the recording of evidence of a witness is concluded and, thereafter, an application is made to recall the witness, as the cross examination of PW-1 by the petitioners had commenced only on the previous date of hearing i.e., 4th June 2022.

14. At the very least, a further opportunity to cross examine PW-1 ought to have been granted. Processual justice is as important as substantive justice, and the requirement of a full and adequate opportunity to represent one’s case cannot be sacrificed at the altar of expeditious trial.

15. I am informed that the case is next listed before the learned ADJ on 27th October 2022.

16. In view of the aforesaid, the impugned order dated 21st September 2022 is quashed and set aside.

17. The petitioners shall be given an opportunity to cross examine PW-1 on 27th October 2022. Every effort shall be made to conclude the cross examination of PW-1 on 27th October 2022. Should the petitioners be unable to complete the said exercise on the said date, the petitioners would be at liberty to make a request in that regard to the learned ADJ who would, then, consider the request on its own merit.

18. Examination/cross examination of remaining witnesses would be taken up only thereafter.

19. The present petition stands allowed to the aforesaid extent with no order as to costs.

OCTOBER 20, 2022
dsm

C. HARI SHANKAR, J.

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