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

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Date of decision: 09.11.2022

+ **FAO(OS) 206/2019**

NEHA DATTA

..... Appellant

Through: Mr Kuldeep Kumar, Advocate.

versus

CAPITOL ART HOUSE PVT LTD

..... Respondent

Through: Ms Diksha Bhatia, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 47493/2022

1. This is an application seeking recall of the order dated 10.10.2022 and the consequent restoration of the appeal.
2. Issue notice.
 - 2.1. Ms Diksha Bhatia accepts notice on behalf of the non-applicant/respondent.
3. For the reasons given in the application, the order dated 10.10.2022 is recalled.
4. We have called upon Mr Kuldeep Kumar, counsel for the applicant/appellant, to argue the main appeal. Since he has agreed, the main

appeal is taken up for arguments.

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5. This appeal is directed against an order dated 19.08.2019 passed by the learned Single Judge in CS(OS) 3379/2015. The grievance of the appellant is that a Compact Disk (CD) has not been taken on record.

6. According to Mr Kumar, the CD would demonstrate that an electricity meter was installed by BSES at the subject premises, in the presence of the representative of the respondent.

6.1. On being queried, Mr Kumar does not dispute the fact that the said CD was in the possession of the appellant since 2015.

7. Although we are told that amendments have been permitted, in the interregnum, both qua the plaint as well as the written statement, there is no viable explanation given by Mr Kumar as to why material in the possession of the appellant i.e., the CD was not placed on record at the appropriate time.

8. It is not in dispute that witnesses cited by the respondent i.e., the plaintiff already stand cross-examined. It is also not disputed by Mr Kumar that the cross-examination of the appellant stands completed.

8.1. According to Mr Kumar, the only witnesses whose cross-examination is yet to take place are private witnesses.

9. We may also note that Mr Kumar has indicated to us that the records of BSES concerning installation of the electricity meter have been summoned.

10. Therefore, according to us, given the entirety of facts, at this stage, if we were to permit the appellant to place the CD on record, it would delay the trial. The suit was instituted, in the first instance, we are told in

November 2015.

11. Thus, having regard to the aforesaid position, we are not inclined to interfere with the impugned order dated 19.08.2019 passed by the learned Single Judge.

12. Mr Kumar's assertion that no reasons were furnished, is not an accurate depiction of the position. The order dated 19.08.2019 does indicate that request for placing the CD on record was declined, in respect of which oral submissions were heard by the learned Single Judge on the date prior to the date when the impugned order was passed.

13. A perusal of the order passed by the learned Single Judge on the previous date does depict her concern with regard the delay in the prosecution of the matter. That to our minds was a good enough reason to decline the request.

14. Thus, for the aforesaid reasons, we are not inclined to interfere with the impugned order.

15. The appeal is accordingly dismissed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

NOVEMBER 9, 2022 / tr