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

% Judgment delivered on: 28.11.2022

+ CM(M) 1304/2022

RAJNI NAGPAL

..... Petitioner

versus

REETA BHAYANA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Abhay Kumar, Mr. Pankaj Jaiswal, Ms. Rakhi Gupta and Ms. Shagun Ruhil, Advocates.

For the Respondents : Mr. Naresh K. Daksh, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

CM APPL. 51048/2022 (for exemption)

Exemption is allowed, subject to all just exceptions.

CM(M) 1304/2022

1. Learned counsel appearing for the petitioner challenges the order dated 13.07.2022, whereby the Trial Court had granted last and final opportunity to file the evidence on behalf of the petitioner on record, subject to Rs. 10,000/-, as cost. Subsequent to the order dated 13.07.2022 it appears that the evidence of PW-2 was filed on record of the Trial

Court.

2. The matter was thereafter listed for recording of evidence of plaintiff on 18.07.2022.

3. The petitioner also challenges the order dated 18.07.2022, whereby the petitioner sought waiver of the cost imposed on the previous date of hearing, which was rejected by the learned Trial Court. Learned Trial Court also dismissed an application seeking summoning of witnesses on the ground that no steps were taken by the petitioner from 23.08.2017 when the issues were framed till that date.

4. Petitioner had also filed third application under Section 151 CPC seeking postponement of the matter, which also was dismissed by the learned Trial Court.

5. On the dismissal of all the three applications, learned Trial Court posted the matter for final hearing. Vide the same order, the defendant's evidence also was closed after taking statement of the counsel for the defendant therein.

6. With the consent of learned counsel appearing for both the parties, the present petition is taken up for disposal.

7. There is no doubt that the petitioner, who is the plaintiff in the Trial Court had not taken steps in time to carry on the recording of evidence. Issues in the present matter were framed as far back as on 23.08.2017 and it appears that no prudent steps were taken out by the petitioner thereafter.

8. It is, however, submitted by learned counsel for the petitioner that the evidence of the petitioner as PW-1 was filed sometime in 20.03.2018. However the same was sought to be recalled later on due to some

technical issues.

9. It is observed by the learned Trial Court that numerous adjournments were availed by the petitioner in the interregnum.

10. Vide order dated 12.10.2021, learned Trial Court had permitted the petitioner to file the fresh evidence. Subsequently, for non-filing of the evidence, a cost of Rs. 3,000/- was also imposed by order dated 17.01.2021.

11. From a perusal of the order dated 05.05.2022, it appears that the petitioner had made an attempt to file the evidence on record. However due to the strike by lawyer, the same could not be filed on record. By the order dated 13.07.2022 last opportunity was granted, which is the subject matter of the present petition.

12. Learned counsel appearing for the respondent submits that no interference is called for in the present petition inasmuch as the petitioner does not appear to be serious about pursuing her case before the learned Trial Court. He submits that despite number of opportunities being granted and in spite of a long lapse of time, the petitioner has failed to adhere to the timelines fixed by the Court and therefore, indulgence ought not to be granted to such litigant.

13. After having heard both the parties, I am of the opinion that the matter should be decided on its merits and recording of evidence is a substantial part of the same. No doubt that the petitioner has been negligent and cost was rightly imposed by the learned Trial Court, however, one last and final opportunity can be granted to the petitioner to lead her evidence, subject to payment of Rs. 30,000/- as cost to the

defendant.

14. Learned counsel for the respondent submits that he has received the copies of the evidence of PW-1 and PW-2.

15. The cost imposed above, may be tendered to the defendant within a week, subject thereto the learned Trial Court may conduct recording of the evidence of the plaintiff on the date fixed before it i.e., 03.02.2023.

16. In case of any failure on the part of the plaintiff to carry out the recording of evidence on the date fixed, i.e. 03.02.2023 the same shall entail closure of recording of the evidence of the plaintiff.

17. So far as the dismissal of the application seeking summoning of witnesses is concerned, in view of the above, the said dismissal is set aside. Learned Trial Court is requested to take up the summoning application and reconsider the same in accordance with law afresh without prejudice to the rights and contentions of either of the parties and without being influenced by any observations made herein.

18. The present petition is disposed of in the above terms.

CM APPL. 51047/2022 (for stay)

19. Since the CM(M) has been disposed of, no orders are called for so far as the present application is concerned.

20. Cost of Rs. 10,000, as imposed by the learned Trial Court shall merge with the cost imposed by this Court.

TUSHAR RAO GEDELA, J

NOVEMBER 28, 2022/nd