

\$~41

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

% Judgment delivered on: 28.04.2023.

+ CM(M) 140/2023 & CM APPL. 4149/2023-STAY

PARAMJEET

..... Petitioner

versus

ASHOK MITTAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Mahavir Prasad, Adv.

For the Respondent : Mr. L. M. Grover, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the orders dated 12.09.2022 in CS DJ 57759/2016 titled "*Paramjeet Vs. Ashok Mittal*" whereby the application under Section 114/151 r/w Order 47 Rule 1 CPC, 1908 seeking review of order dated 21.07.2022 whereby the right of petitioner /plaintiff to lead evidence was closed and the review application was dismissed by way of the impugned order.

2. Learned counsel submits that subject to cost of Rs.1,500/- the learned Trial Court vide the order 19.02.2019 had permitted the filing of the evidence by way of affidavit of PW Rakesh Kumar on record.

3. Subsequently, the matter was directed to be listed for recording of PE on 18.07.2019. On 18.07.2019, the documents in respect of petitioner/ plaintiff namely Mr. Paramjeet was placed on record and taken into consideration by the learned Trial Court. The learned Trial Court has also noted that the main counsel for the respondent / defendant was stated to be out of station and last opportunity was granted to cross examine the PW1, and accordingly, the case was next listed on 01.11.2019. On 01.11.2019, neither of the main counsel for the parties were available and therefore, as a last opportunity, the adjournment was granted to the respondent/ defendant to cross examine PW1 and subsequently, it was posted for recording of evidence of PW1 on 29.04.2020.

4. Learned counsel submits that thereafter due to pandemic, the matter was not taken up. Vide the order dated 21.07.2022, immediately after the covid -19 pandemic was over, the learned Trial Court noticed that the petitioner /plaintiff's witness had not been appearing and closed the right to lead evidence.

5. Learned counsel submits that the counsel himself has been suffering for the last many years on account of serious medical ailment and is on dialysis on a regular basis and was unable to communicate the petitioner to appear for recording of his evidence.

6. Learned counsel submits that since the matter has been listed immediately after the Covid-19 pandemic period, learned Trial Court ought to have taken such period into consideration and keeping in view the medical condition of the petitioner as well as the counsel ought to have granted one more opportunity.

7. *Per contra*, learned counsel appearing for the respondent/defendant submits that the evidence of affidavit of Mr. Ramesh Kumar was filed in the year way back in 2017 and petitioner/plaintiff has not been able to explain any reason as to why from the year 2017 till 2022, the petitioner was not present and not able to record his evidence.

8. In those circumstances, learned counsel appearing for the respondent submits that orders dated 21.07.2022 and 12.09.2022 are in accordance with law keeping in view the fact of this case. As such, this Court ought not to interfere under Article 227 of the Constitution of India inasmuch as the said impugned orders are sustainable in law and procedurally correct.

9. This Court has heard the submissions of the learned counsel appearing for the parties as also perused the impugned orders and the other orders placed on record.

10. From an observation of the orders dated 19.02.2019, 18.07.2019 and 01.11.2019, it is clear that the learned Trial Court had granted permission to the petitioner/plaintiff to file the witness statement of PW1, by the time. The matter then came up for cross examination on 29.04.2020, when the COVID-19 pandemic had struck and created havoc in the world. After the covid-19, for the first time when the matter was listed before the Trial Court on 21.07.2022, wherein, it recorded that the petitioner as PW1 had not appeared and consequently, closed the right of the petitioner to lead evidence.

11. This court has considered the aforesaid document and is of the considered opinion, keeping in view the fact that the matter was listed

for the first time on 21.07.2022 that too after the Covid-19 pandemic, coupled with the fact that the medical documents were already on record, the learned Trial Court ought to have granted at least one more opportunity keeping in view the medical condition of the petitioner as also the learned counsel appearing for the petitioner before the learned Trial Court, and the petitioner /plaintiff cannot be deprived of an opportunity to lead evidence.

12. Accordingly, the orders dated 21.07.2022 as well as 12.09.2022 are set aside.

13. In view of above, the learned Trial Court is requested to permit the petitioner /plaintiff to lead evidence on 16.05.2023 and commence the recording of evidence.

14. The petition is allowed with no order as to costs.

TUSHAR RAO GEDELA, J .

APRIL 28, 2023/ms