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

Date of decision: 17.10.2023

+ CM(M) 241/2023 & CM APPL. 17500/2023

UNION BANK OF INDIA

..... Petitioner

Through: Mr. Samarendra Kumar, Advocate

versus

CHANDER PRAKASH

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 24.12.2022 passed by the Civil Judge – 01, Central District, Tis Hazari Court in CS no. 2249/2016 ('Trial Court') whereby the Trial Court dismissed the applications of the Petitioner filed (i) under Order 18 Rule 17 of the Civil Procedure Code, 1908 ('CPC') for recall of plaintiff witness i.e. PW-1; and (ii) under section 151 of CPC for waiver of cost as imposed by the Trial Court vide order dated 16.07.2022.

1.1. The Petitioner is the original defendant and the Respondent is the original plaintiff in the civil suit.

1.2. The civil filed has been filed by the Respondent i.e. the plaintiff for recovery of Rs. 1,00,000/- alongwith interest against the Petitioner.

1.3. The parties are referred to by their original rank and status before the



Trial Court.

2. Learned counsel for the defendant states that the defendant proposes to examine a single witness and the evidence affidavit of the said witness has already been filed on record.

2.1. He states that the defendant shall pay the cost of Rs. 3,000/- imposed by the Trial Court *vide* order dated 16.07.2022 to the plaintiff on the next date of hearing fixed before the Trial Court.

2.2. He states that the defendant in this petition is seeking a last opportunity to cross-examine the plaintiff witness, PW-1.

3. None appears on behalf of the plaintiff despite service.

4. Learned counsel for the defendant has placed before this Court the proceedings of the Trial Court taking on record this Court's order dated 23.08.2023. However, despite notice of these proceedings, there is no representation on behalf of the plaintiff.

5. This Court has considered the submissions of the counsel for the defendant and perused the record.

6. In view of the proceedings recorded on 23.08.2023, this Court is of the opinion that the order dated 24.12.2022 does not suffer from any infirmity since in the facts of this case, undoubtedly, the defendant has been negligent in conducting the proceedings before the Trial Court

7. It is also evident from the records that there were successive opportunities given by the Trial Court to the defendant to cross examine PW1 on 22.12.2021 and 23.04.2022, yet the defendant has failed to avail the said opportunities.

8. However, this Court is of the opinion that it would be in the interest of justice, if the defendant is permitted to cross-examine the plaintiff witness



i.e. PW1 and lead its evidence to ensure that the claims of the plaintiff are decided on merits. It will also preclude arguments of non-consideration of the defence of the defendant at subsequent stage and with regards to violation of Principles of Natural Justice and would as well save multiplicity of proceedings.

9. Thus, the impugned order dated 24.12.2022 is set aside with regards to recall of the plaintiff witness i.e. PW-1 with the following directions: -

- a. The defendant will pay cost of Rs. 3000/- imposed *vide* order dated 16.07.2022 to the plaintiff before the Trial Court on the next date of hearing.
- b. In addition, the defendant will pay legal costs of Rs. 5000/- payable to the plaintiff before the Trial Court on the next date of hearing. Thus the total sum of Rs. 8000/- will be paid towards cost by the defendant for the delay caused in the proceedings before the Trial Court.
- c. The learned Trial Court is requested to fix a date of hearing for cross-examination of plaintiff witness i.e. PW-1.
- d. The defendant will cross examine PW-1 on the date so fixed by the learned Trial Court and not seek any unnecessary adjournment.
- e. After the cross examination of PW-1 is concluded, the defendant will lead evidence of its sole witness i.e., DW-1. The evidence affidavit of DW-1 stands filed.
- f. The defendant will not seek any unnecessary adjournment before the Trial Court and will be duly represented through a counsel on each date of hearing to co-operate in the expeditious disposal of the trial. No adjournment will be granted to the defendant on account of unavailability of the advocate.

10. With the aforesaid directions, this petition is allowed.



11. The order dated 24.12.2022 to the extent that it dismisses the application of the defendant seeking waiver of cost as imposed vide order dated 16.07.2022 is upheld.

12. The order dated 24.12.2022 to the extent it dismisses the application of the defendant under Order XVIII Rule 17 for recalling of the plaintiff witness i.e., PW-1 for cross-examination is set aside on the aforesaid terms and the defendant herein is granted final opportunity to cross-examine PW-1 diligently.

13. It is clarified that if the defendant defaults in complying with any of the aforesaid directions, the liberty granted by this Court with respect to defendant's right to cross-examine PW-1 shall stand closed; and no further opportunity will be granted to the defendant.

14. Pending Applications, if any, shall stand disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 17, 2023/rhc/ms

Click here to check corrigendum, if any