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

Date of decision: 29.11.2023

+ CM(M) 534/2023 & CM APPL. 15803/2023

SANJAY GANDHI MEMORIAL HOSPITAL MANAGEMENT

..... Petitioner

Through: Mr. Arun Panwar, Advocate

versus

PREETI & ANR.

..... Respondents

Through: Mr. S.N. Gupta, Advocate

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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 Constitution of India impugns the order dated 05.01.2023 passed by the learned Presiding Officer, Industrial Tribunal-II, Rouse Avenue, District Court, New Delhi in ID No.30/2018, titled as **Preeti vs. Sanjay Gandhi Memorial Hospital & Anr.** ('Industrial Tribunal').

1.1. The Petitioner is the original respondent and Respondents are the original petitioners before the Industrial Tribunal.

1.2. The Industrial Tribunal vide impugned order dated 05.01.2023 allowed an application filed by the Petitioner herein seeking recall of the order dated 10.01.2020, whereby the right of the Petitioner to file a written statement was closed. The Trial Court while recalling the order and after



considering the explanation offered by the Petitioner herein for its delay, imposed costs of Rs. 5,000/- upon the petitioner herein.

1.3. The Trial Court by a separate order imposed costs on the Petitioner on 16.11.2022 for non-appearance of its counsel. The Petitioner herein had also moved a second application for seeking waiver of the costs imposed on the said date (16.11.2022). The Trial Court by the impugned order dated 05.01.2023 had also rejected the second application.

2. Learned counsel for the Petitioner states that the Petitioner herein is a government funded hospital and therefore, the imposition of costs is onerous.

3. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

Impugned order dated 05.01.2023 refusing to waive cost imposed on 16.11.2022

4. The Trial Court vide order dated 16.11.2022 noted that an adjournment was sought on the ground that the counsel for the Petitioner was engaged in a matter before the High Court. The Trial Court in the interest of justice, adjourned the matter, however, it imposed costs of Rs. 5,000/- on the Petitioner for seeking an adjournment.

4.1. In the opinion of this Court, the imposition of costs on 16.11.2022 was justified more specifically in view of the provisions of Order XVII, Rule 1(2)(c) which reads as under:

“1. Court may grant time and adjourn hearing.—[(1) The court may, if sufficient cause is shown, ...
(2) Costs of adjournment.—In every such case the Court shall fix a day for the further hearing of the suit, and 2 [shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:]



xxx xxx xxx

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment, ...”

(Emphasis Supplied)

4.2. Therefore, the order of the Trial Court imposing costs on 16.11.2022 and the order of the Trial Court dated 05.01.2023 dismissing the application seeking waiver of costs does not suffer from any infirmity.

Impugned order dated 05.01.2023 imposing costs while condoning delay in filing the written statement and recalling order dated 10.01.2022

5. The Petitioner herein was served on 25.02.2019. However, the Petitioner failed to file its written statement to the statement of claim petition for one (1) year till 10.01.2020.

5.1. In these circumstances, the Industrial Tribunal closed the right of the Petitioner to file the written statement vide order dated 10.01.2020. Thereafter, by impugned order dated 05.01.2023 the Industrial Tribunal recalled the order dated 10.01.2020 and permitted the Petitioner herein to file a written statement.

5.2. The Trial Court observed that no sufficient ground had been furnished by the Petitioner in explaining its delay for non-filing of its written statement between 10.01.2020 and 16.11.2022, however, the Trial Court observed that since the matter is at the initial stage and recording of evidence has not yet started, therefore, subject to payment of costs of Rs. 5,000/- the application for written statement to be taken on record was allowed.

6. It is evident from the record that the proceedings before the Industrial Tribunal remained stalled between 25.02.2019 and 05.01.2023 for four (4) years on account of non-filing of the written statement.



7. In these circumstances, the order of the Trial Court imposing costs of Rs. 5,000/-, while condoning the delay in filing the written statement, does not warrant any supervisory interference. This Court, in fact, is of the opinion that filing of this petition impugning the order of the Trial Court imposing costs is itself unwarranted under Article 227 of the Constitution of India. The order of the Trial Court is within its jurisdiction and in accordance with law.

8. This Court is refraining from imposing any further costs on the Petitioner which is unmerited, considering that it is a government funded hospital.

9. For the aforesaid reasons, this petition is completely devoid of merit and is accordingly dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 29, 2023/msh/ms

Click here to check corrigendum, if any