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

% Judgment delivered on: 27.04.2023

+ CM(M) 674/2023

M/S NORTHERN INDIA TILES CORPORATION Petitioner

versus

JINDAL CHARITABLE TRUST

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. P.K. Rawal and Mr. Tarun
Agarwal, Advocates

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APP No. 20979/2023

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 674/2023 & CM APP No. 20980/2023 (Stay)

3. The petitioner/defendant challenges the order dated 14.02.2023 as well as the order dated 02.11.2022 in Ex. No. 77731/2016 titled *Jindal Charitable Trust vs. M/s Northern India Tiles Corporation*, whereby

vide the order dated 02.11.2022 the opportunity to cross-examine PW-1 was closed and vide the order dated 14.02.2023 an application seeking recall of the order dated 02.11.2022 seeking an opportunity to cross-examine PW-1 was dismissed.

4. Mr. P.K. Rawal, learned counsel appearing for the petitioner/defendant submits that the evidence of PW-1 was filed on 18.10.2019 whereafter, for various reasons as also for the reason that COVID-19 had created a havoc for almost two years, the evidence of PW-1 was not tendered. Learned counsel submits that it was only on 02.11.2022 when the evidence of PW-1 by way of an affidavit was tendered.

5. Learned counsel submits that since the counsel was not well on 02.11.2022, the colleague of the said counsel had made a request that the case be adjourned for cross-examination on medical grounds, which was rejected.

6. Mr. Rawal, learned counsel submits that the opportunity to cross-examine PW-1 could not have been rejected for the reason that the examination-in-chief of the witness was conducted on 02.11.2022 itself.

7. Learned counsel submits that aggrieved by the order dated 02.11.2022, the petitioner filed an application under Section 151 CPC seeking recall of order dated 02.11.2022.

8. Learned counsel submits that alongwith the recall application, the requisite medical document in support of the submission was also filed.

9. Mr. Rawal submits that on 14.02.2023, by the time the colleague had reached the learned Trial Court, the impugned order was already passed. In support of the aforesaid submission, Mr. Rawal has also filed

the affidavit of his colleague, which is at page 94 as Annexure 'M'.

10. Learned counsel submits that in any case, the learned Trial Court could not have deprived the petitioner/defendant from conducting cross-examination of PW-1 even if the counsel for petitioner/defendant was not available on the very first day. The rejection of the application, without considering the requisite medical documents, which was filed, itself is a violation of the principles of natural justice.

11. Mr. Rawal, learned counsel submits that the impugned order calls for interference by this Court under Article 227 of the Constitution of India.

12. Mr. Rawal, learned counsel submits that advance notice in accordance with notification of this Court bearing Delhi High Court Circular No. 69/Rules/DHC dated 05.12.2019 has already been sent to the trustee namely Rishi Jindal, who is PW-1, on behalf of the respondent/plaintiff.

13. This Court has considered the submissions made by Mr. Rawal, learned counsel appearing for the petitioner/defendant and also perused the relevant record as also the medical documents annexed to the application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter as "CPC"), seeking recall of the order dated 02.11.2022.

14. Without going into the merits of the matter as to whether the order dated 02.11.2022 calls for any interference by this Court under Article 227 of the Constitution of India, a perusal of the impugned order dated 14.02.2023 brings to fore that neither the oral submissions were heard nor the medical documents, annexed to the said application under Section 151 of CPC, seeking recall of the order dated 02.11.2022, were

at all considered by the learned Trial Court.

15. A perusal of the said impugned order also brings to fore that the same was passed in the absence of the counsel. Whatever may have been the reasons for such order being passed, the opportunity atleast to urge submissions in support of the said application was available to the petitioner and the denial of such opportunity would tantamount to violation of principles of natural justice.

16. The aforesaid opinion is formed also for the reason that the denial of an opportunity to cross-examine a witness by the other party is a drastic curtailment and could have a deleterious effect on the stand taken by the petitioner/defendant before the learned Trial Court.

17. Without commenting on the legality or otherwise of the order dated 14.02.2023 on merits, the same shall stand set aside with a direction to the learned Trial Court to re-consider the application under Section 151 of CPC filed on behalf of the petitioner seeking recall of the order dated 02.11.2022 after hearing the petitioner as well as the respondent, on the merits of the said application.

18. Since this Court has only redirected re-hearing of the said application, the response from the respondent/plaintiff in the present case is dispensed with.

19. In view of the above, the present petition is disposed of without any order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 27, 2023

