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

% Judgment delivered on: 02.05.2023

+ CM(M) 714/2023

PITAM GOEL

..... Petitioner

versus

RADHEY SHYAM

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Vibha Mahajan Seth and Mr. Gaurav Manuja, Advocates.

For the Respondent : Mr. Mukesh Kumar Sharma and Mr. Kumar Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 22356/2023 (for exemption)

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

CM(M) 714/2023 & CM APPL. 22355/2023 (for stay)

3. Petitioner challenges the order dated 24.02.2023 in CS No. 58442/16 titled "*Radhey Shyam (Senior Citizen) vs. Parmeshwari Dass & Anr.*" whereby the learned Trial Court has closed the right of petitioner/ defendant No.1 to lead further defence evidence on the

ground that the learned Trial Court on perusal of the previous order sheets found that the petitioner/ defendant No.1 is not inclined to lead his defence evidence and had sought repeated adjournments.

4. Ms. Vibha Mahajan Seth, learned counsel for the petitioner submits that the cross-examination of petitioner/ defendant No.1, who appeared as DW-1 before the learned Trial Court was concluded on 01.02.2023. Learned counsel submits that on 14.02.2023 the application seeking summoning of witnesses was also filed seeking summoning of about 8 witnesses.

5. Learned counsel submits that ignoring the aforesaid application, the learned Trial Court has passed the impugned order on 24.02.2023. Ms. Seth, learned counsel submits that the evidence of petitioner/ defendant No.1 could not have been closed in such a mechanical manner without even applying in mind to the summoning application filed on 14.02.2023, thereby drastically curtailing the right of the petitioner/ defendant No.1 to present his witnesses in accordance with law.

6. Ms. Seth, learned counsel also draws attention of this Court to page No.54 which is the list of witnesses filed on 14.10.2013, who were sought to be examined on behalf of defendant No.1 containing the name of Sh. A.A. Vetel (the Tenant) and Sh. Chajjuram (the Contractor).

7. On that basis, Ms. Seth, learned counsel submits that these are not even witnesses, who were surprise witnesses and were already a part of the list of witnesses filed as far back as on 14.10.2013.

8. Ms. Seth, learned counsel submits that the said impugned order is a stark display of non-application of mind to the facts and the documents as appearing on the records of the learned Trial Court. She

submits that the said impugned order warrants interference by this Court under Article 227 of the Constitution of India.

9. *Per contra*, Mr. Mukesh Kumar Sharma, learned counsel appearing for the respondent/ plaintiff submits that the impugned order has correctly examined the earlier order sheets and has found that the petitioner/ defendant No.1 had not led defence evidence despite number of opportunities having been afforded to the petitioner. Learned counsel submits that despite the DW-1, having been subjected to evidence and cross-examination on a number of days, the summoning application was not filed in time.

10. On that basis, learned counsel submits that this Court may not interfere in the impugned order and it is sustainable in law.

11. This Court has heard the learned counsel for the parties as also perused the impugned order and the other documents placed on record. It is beyond cavil that the parties to litigation ought to be afforded full opportunity to lead evidence in respect of their stand before the learned Trial Court and should not be deprived of such valuable rights on mere technicalities.

12. It is apparent that the aforesaid two witnesses, who were sought to be examined by way of the summoning application dated 14.02.2023, were a part of the original list of witnesses filed as far back as on 14.10.2013. It is apparent from the perusal of the impugned order that there is no reference at all to either the summoning application dated 14.02.2023 or even the list of witnesses as originally filed on 14.10.2013 at all, the non-application of mind is writ large.

13. Even otherwise had these two witnesses been brought by the

petitioner/ defendant No.1 before the learned Trial Court on 24.02.2023, the date of the passing of the impugned order itself, there was no way the learned Trial Court could have refused or deprived the petitioner/ defendant No.1 from examining such witnesses.

14. In view of the above, this Court is of the considered opinion that the impugned is unsustainable in law and has to be set aside.

15. Ms. Seth, learned counsel appearing for the petitioner submits and gives an undertaking that out of list of witnesses named in the summoning application dated 14.02.2023, only Sh. Chajjuram and Sh. A.A.Vetal alone would be examined.

16. In view of the aforesaid statement of the learned counsel, it is directed that, apart from Sh. A.A. Vetal (the tenant) and Sh. Chajjuram (the contractor) no other witness will be permitted to be examined by the petitioner/ defendant No.1.

17. Petitioner/ Defendant No.1 is directed to place on record the affidavit of evidence of both the witnesses within one week from today and the first witness will be examined by the learned Trial Court on 10.05.2023, subject to its convenience.

18. The petition along with pending application is disposed of in the above terms with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 2, 2023/nd