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

% Judgment delivered on: 8.05.2023

+ CM(M) 739/2023 & CM APPL. 23263/2023 (Stay)

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SMT SANTOSH

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr.Siddhant Nath, Standing Counsel

For the Respondent : Ms. Meghna De and Ms. L. Gangmei,  
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. 23264/2023 (Exemption)**

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

**CM(M) 739/2023 & CM APPL. 23263/2023 (Stay)**

3. The petitioner challenges the order dated 28.10.2022 passed in ID No. 335/2016 titled '*Smt. Santosh Vs. EDMC*', whereby the right of the petitioner-management to lead evidence was closed on the ground that no affidavit of evidence was filed and on that date an adjournment was sought.
4. Learned counsel appearing for the petitioner on the basis of the

judgment of the Hon'ble Supreme Court '*Levaku Pedda Reddamma vs Gottumukkala Venkata Subbamma*' Civil Appeal No. 4096/2022 submits that though the Supreme Court was dealing with the petition arising out of an application under Order VIII Rule 1 CPC, 1908 seeking to place on record the documents after some delay, which was condoned by the Hon'ble Supreme Court, submits that the ratio would be applicable to the present case inasmuch as the present case, the learned Presiding Officer, Industrial Tribunal-II, Rouse Avenue District Court, New Delhi did not even consider the medical documents placed on record along with the application to show that the parents of the AR of the management were taken to the hospital on 26.08.2022, when the right to lead evidence was closed by the learned Trial Court.

5. Learned counsel submits that though the learned Trial Court had noted the fact regarding the medical treatment, yet did not give any sympathetic consideration of the same.

6. Learned counsel submits that given one chance the evidence of the petitioner-management would be commenced without fail.

7. *Per contra*, Ms. De learned counsel appearing for the wife of the deceased workman submits that the present dispute was originally raised in the year 2013 though renumbered in the year 2016 had been pending since then and the petitioner-management has been delaying the proceedings on one ground or the other.

8. Ms. De also submits that the learned Trial Court by way of the impugned order has itself noted that the evidence of the petitioner-management was already closed vide the order dated 19.12.2019 and are reopened once and this was the second opportunity which they have

failed to avail of.

9. Learned counsel submits that the impugned order is sustainable in law and ought not to be interfered by this Court.

10. This Court has considered the submissions of learned counsel appearing for the parties as also the impugned order and the medical documents annexed in support of the application seeking setting aside of the order dated 26.08.2022 whereby the evidence of the petitioner-management was closed.

11. A reading of the impugned order brings to fore that the petitioner-management was indeed callous inasmuch as the evidence was already closed once before by way of the order dated 19.12.2019 which was subsequently re-opened on an application filed by it vide the order dated 11.02.2021. It appears that subsequently the petitioner was given opportunities on 25.10.2021, 25.01.2022, 10.05.2022 and ultimately on 26.08.2022 to lead evidence and in the absence whereof, the order dated 26.08.2022 was passed closing the right of the petitioner-management to lead evidence.

12. This Court has also considered the medical documents, which are placed as Annexure P-4 with the present petition, and categorically show that on 26.08.2022, both the parents of the AR of the petitioner - management were indeed examined for various medical ailments and it appears to be documents which were not considered by the learned Presiding Officer, Industrial Tribunal-II.

13. A closer look at the said medical documents also reveals that the parents are over 70 years of age and as such documents ought to have been considered by the learned Presiding Officer, Industrial Tribunal-II.

14. Though the observations made by the learned Presiding Officer, Industrial Tribunal-II in the impugned order may not be interfered with, however, the fact that as on 26.08.2022, when the opportunity was closed, there appears to be a sufficient cause for not having appeared on the said date. Though the petitioner had ample opportunities prior thereto to file the evidence, if any, on its behalf, however, it failed to do so.

15. Keeping in mind the fact that the evidence of the party is a right which is granted by virtue of law, as also keeping in view the medical document filed on record of the parents of the AR of the petitioner-management, this Court is of the considered opinion that the respondent wife of the deceased workman can be compensated for such indulgence.

16. In view of aforesaid submission, the petitioner-management is permitted to file its affidavit of evidence of all the witnesses within one week from today.

17. The learned Presiding Officer, Industrial Tribunal-II is directed to take the evidences of the witnesses on behalf of the petitioner on record if the same are filed on or before 15.05.2023 with an advance copy to learned counsel appearing for the respondent workman.

18. Learned Presiding Officer, Industrial Tribunal-II is also directed to conclude the recording of evidence within two months from today.

19. The aforesaid directions are subject to a payment of Rs.20,000/- to the wife of the deceased workman on or before 25.05.2023 against a valid receipt. Receipt may be filed under proper index before the learned Presiding Officer, Industrial Tribunal-II.

20. It is also made it clear that the date of appearance of the witnesses

for the purpose of cross examination as given by learned Presiding Officer, Industrial Tribunal-II will not be changed, for any reason whatsoever. In case a witness is not present on the date, learned Presiding Officer, Industrial Tribunal-II is at liberty to close the evidence of the said witness.

21. The petition is disposed of.

**TUSHAR RAO GEDELA, J .**

**MAY 8, 2023/MS**

