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

% Judgment delivered on: 10.05.2023

+ **CM(M) 760/2023**

MAMTA RANI & ANR

..... Petitioner

versus

RENU RANI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Deepak Parashar and Mr. Prakhar Singh, Advocates

For the Respondent : Ms. Sakshi Arora and Mr. Rajesh Jain, 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. 23919/2023

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

CM(M) 760/2023 & CM APPL. 23918/2023 (Stay)

3. The petitioners challenge the order dated 02.05.2023 passed in CS (COMM) No. 480/2020 titled *Renu Rani vs. Mamta Rani & Anr*,

whereby the right of the petitioners/defendants to examine DW-Mamta Rani, petitioner no.1 herein, was closed for the reasons that neither main counsel nor the witness had appeared since morning despite repeated calls.

4. Mr. Deepak Parashar, learned counsel appearing for the petitioners submits that the counsel alongwith witness had infact appeared a little after 2:20 p.m. by which time the learned Trial Court had already closed the opportunity.

5. Learned counsel submits that the counsel was appearing before the High Court on 02.05.2023 and by the time his matter got over in the High Court he could reach the Trial Court alongwith the witness, only after 2:00 p.m. by which time the order impugned was already passed.

6. Ms. Sakshi Arora, learned counsel appears for the respondent/plaintiff and submits that the contentions of the learned counsel for the petitioners is incorrect and factually not borne out of the records.

7. This Court has heard the submissions of learned counsel for the parties and keeping in view that one of the witnesses on behalf of the petitioners/defendants had already been examined and it was only the petitioner-Mamta Rani who had to appear as a the next witness on behalf of the defendants, the closure of an opportunity, despite the fact that the witness alongwith the counsel had appeared late on that date, does not seem to be proper.

8. Having also regard to the fact that the learned counsel had requested the proxy counsel to appear before the learned Trial Court so

as to apprise it about the fact that the counsel for the petitioners/defendants was infact appearing before this Court in another matter and it was only subsequent thereto that he could appear before the District Court, it is clear that the same was not taken into consideration by the learned Trial Court.

9. This Court has perused the order dated 02.05.2023 passed in CS(COMM) No. 669/2021, where the name of the counsel appearing for the petitioner is recorded as having appeared for the plaintiff in that particular case on 02.05.2023. The said order leads evidence to the version of the petitioner and ought to have been considered by the learned Trial Court.

10. That, coupled with the fact that Ms. Sakshi, learned counsel appearing for the respondent submits that since it a commercial Suit, the timelines have to be adhered to.

11. In view of the aforesaid as also keeping in mind that the petitioner was not provided an opportunity to present herself as a witness, though the petitioner reached late on 02.05.2023, coupled with the fact that the matter is stated to be listed tomorrow, i.e. 11.05.2203, this Court is of the considered opinion that one opportunity can be granted to the petitioner/defendant to appear as witness for the defendant on 11.05.2023.

12. Ms. Sakshi submits that she would complete the cross-examination of DW-Mamta Rani tomorrow itself.

13. The affidavit of evidence of Ms. Mamta Rani is stated to have already been filed before the learned Trial Court and advance copy

thereof has already been handed over to Ms. Sakshi, learned counsel for the respondent.

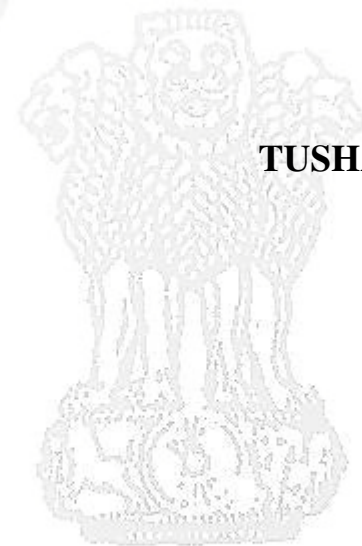
14. Learned Trial Court is requested to record the evidence of DW-Mamta Rani tomorrow i.e. 11.05.2023 and conclude the same tomorrow itself. Learned Trial Court is at liberty to proceed in accordance with law, thereafter.

15. With the aforesaid terms, the petition alongwith application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 10, 2023

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