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

% Judgment delivered on: 22.05.2023

+ CM(M) 861/2023

M/S SHAURYA IMPEX

..... Petitioner

versus

M/S BLACK DIAMOND PULSES PRIVATE LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Gaurav Aggarwal, Ms. Mahima Misra and Mr. Naman 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 APPL. 27151/2023

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

CM(M) 861/2023 & CM APPL. 27150/2023 (Stay)

3. The petitioner challenges the order dated 06.05.2023 (wrongly typed as 06.03.2023) passed in CS (Comm) No. 28/2019 titled *M/s Black Diamond Publishers Pvt. Ltd vs. M/s Shaurya Impex*, whereby the

learned Trial Court had closed the right of the petitioner/defendant to record the evidence of witness namely Mr. Harsh Gupta on the ground that neither the counsel nor the witness was present on the date fixed by it.

4. Mr. Gaurav Aggarwal, learned counsel appearing for the petitioner submits that on the date so fixed, the witness namely Mr. Harsh Gupta had to urgently divert himself before reaching the Court premises to the school of his son from where he was informed that his minor son had taken ill suddenly and requested the father, i.e., Mr. Harsh Gupta to pick him up for the medical treatment.

5. On a query by this Court, learned counsel submits that the aspect as to the sudden medical urgency which had arisen with respect to the child of the witness Mr. Harsh Gupta and the documents in support thereof were not filed before the learned Trial Court apprising it of the reasons as to why and under what circumstances the petitioner was unable to appear before the learned Trial Court for recording of the evidence.

6. Learned counsel submits that the order also wrongly notes the date of the order itself as 06.03.2023 whereas the actual date of the impugned order is 06.05.2023. Learned counsel submits that the issue of the date can be ascertained by the order dated 25.02.2023, which is at Page 46 of the present petition.

7. This Court has considered the arguments of the learned counsel as also considered the impugned order passed by the learned Trial Court. It is apparent that the learned Trial Court was constrained to pass the impugned order for the reason that no such application or even the

document regarding the medical emergency with which the minor son of the witness Mr. Harsh Gupta, had been afflicted suddenly.

8. From a perusal of the medical documents filed before this Court, it is apparent that the child had suddenly taken ill on 06.05.2023 itself and due to which reason the witness Mr. Harsh Gupta could not appear the learned Trial Court. It has also been apprised by the learned counsel that the school of the minor son is in Bahadurgarh, which took substantial time to reach and as such the witness could not return back within time before the learned Trial Court on 06.05.2023.

9. In view of the aforesaid submissions as also after having gone through the impugned order, this Court is of the considered opinion that the petitioner ought to be given an opportunity to file an appropriate application, appending thereto, the medical documents as also the other relatable documents issued by the school to seek the liberty to present the witness namely Mr. Harsh Gupta for recording of the evidence. It is also informed that the evidence by of affidavit of the witness Mr. Harsh Gupta is already on record.

10. Learned Court is directed to consider sympathetically the application which may be filed and decide it in accordance with law.

11. Learned counsel informs that the matter is listed before the learned Trial Court on 29.05.2023.

12. The petitioner is at liberty to file the appropriate application before the learned Trial Court within two days from today.

13. The learned Trial Court is requested to take up the said application on 29.05.2023 and dispose of the same before proceeding with the other issues for which the same is listed.

14. In view of the aforesaid the petition and application are disposed of with no order as to costs.

15. A copy of order be given *dasti* under signatures of Court Master.

TUSHAR RAO GEDELA, J.

MAY 22, 2023

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