



Neutral Citation Number 2023:DHC:4887-DB

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 11.07.2023

+ RFA(COMM) 137/2023

+ RFA(COMM) 138/2023

M/S IMPERIA STRUCTURES LTD. .... APPELLANT

versus

LEO ROADLINES PVT. LTD ..... RESPONDENT

**Advocates who appeared in this case:**

For the Petitioner: Mr. Pankaj Gupta with Mr. Tushar Sharma, Mr. Shadman Ahmed Siddiqui, Mr. Mohammad Faizan, Mr. Siddharth Pandey, Advocates.

For the Respondents: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Mr. Ayush Mittal, Ms. Maninder Kaur and Mr. Oshin Maggu, Advocates.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

**CM APPL.34690/2023 (exemption) in RFA(COMM) 138/2023**

Exemption allowed subject to all just exceptions.

**CAV.337/2023 in RFA(COMM) 138/2023**

Since learned counsel for respondent/caveator enters appearance, caveat stands discharged.



Neutral Citation Number 2023:DHC:4887-DB

**RFA(COMM) 137/2023 & CM APPL.34682/2023 (stay),**  
**RFA(COMM) 138/2023 & CM APPL.34689/2023 (stay)**

1. Appellant impugns judgments dated 15.04.2023, whereby, the Suit of the defendant has been decreed and a decree for recovery of money has been passed.
2. Learned counsel for appellant submits that the right of the appellant to cross-examine the witnesses and to lead defendant evidence was closed on the ground that the dates stipulated for recording of evidence had been exhausted. He submits that grave prejudice has been caused to the appellant and the Trial Court has erred in closing the right of the appellant to cross-examine witnesses of the respondent/plaintiff.
3. Issue notice. Notice is accepted by learned counsel appearing for respondent/caveator.
4. With the consent of the parties, the appeals are taken up for final disposal today.
5. Perusal of the record shows that the issues in the Suits were framed on 06.12.2022. The Trial Court directed the parties to file list of witnesses within 15 days and appointed a Local Commissioner to record the evidence of the parties. Dates of 10<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 18<sup>th</sup> and 25<sup>th</sup> January, 2023 were fixed for plaintiff evidence and 12<sup>th</sup>, 13<sup>th</sup>, 18<sup>th</sup>, 23<sup>rd</sup> January, 2023 were fixed for defendant evidence. The returnable



Neutral Citation Number 2023:DHC:4887-DB

date before the Court for receiving the evidence of the parties, final arguments and report of the Local Commissioner was 08.02.2023.

6. Perusal of the schedule fixed by the Court shows that the Court, at the very outset, committed an error. The dates for plaintiff and defendant evidence are common. The Court seems to have fixed the matter for defendant's evidence even prior to commencement and conclusion of the plaintiff's evidence.

7. On 10.01.2023, the evidence of the plaintiff's witness PW-1 was filed but PW-1 was not present for tendering the evidence. The matter was thereafter taken up on 12.01.2023 when the Local Commissioner noticed that exhibit marks had not been mentioned in the evidence affidavit. The documents were exhibited by the witness during his examination-in-chief. Thereafter the case was adjourned by the Commissioner to 13.01.2023 at 2:30 pm. On the request of counsel for the defendant/appellant, the date 13.01.2023 was cancelled and the matter was thereafter listed on 18.01.2023.

8. On 18.01.2023, the Commissioner noticed that both the parties had filed their list of witnesses and accordingly, arguments were heard for taking on record the list of witnesses which were then directed to be taken on record. Thereafter part cross-examination of PW-1 took place. The matter was thereafter taken up by the Commissioner on 23.01.2023 when PW-1 was further cross-examined and then listed on



Neutral Citation Number 2023:DHC:4887-DB

25.01.2023 when the Commissioner noticed that the dates originally fixed by the Court were exhausted and the matter was place before the Court on 08.02.2023.

9. On 08.02.2023, the Court noticing the above proceedings observed that as the dates, which had originally been agreed upon had been exhausted held that the defendant was wasting the time of the Commissioner and forcing the plaintiff to pay Rs.5,000/- to the Local Commissioner for each date without proper utilization. The Court imposed a cost of Rs. 50,000/- on the defendant/appellant and directed the defendant to deposit the cost the very same day. Since the Appellant failed to deposit the cost on the same date, the defense was struck off and the case was listed for final arguments on 15.02.2023.

10. Perusal of the record as well as the order sheets shows that the Trial Court has acted in a grave haste and without appreciating the actual proceedings imposed cost on the defendant and held that the defendant/appellant had wasted the time of the Commissioner.

11. The initial order dated 06.12.2022, fixing the schedule for evidence itself, as noticed hereinabove, is erroneous. Out of 5 dates fixed for the plaintiff evidence, 3 dates are common for defendant evidence. On one date PW-1 was not present, on one date, the time was spent for taking on record the belatedly filed list of witnesses.



Neutral Citation Number 2023:DHC:4887-DB

12. Local Commissioner has not made a complaint that the defendant/appellant was delaying the proceedings or was asking unnecessary questions in the cross-examination. The Court should have at best directed the Local Commissioner to take up the proceedings expeditiously and preferably on a day-to-day basis in case there was urgency.

13. In *Jayendra Vishnu Thakur vs. State of Maharashtra* : (2009) 8 SCC 104 @ pr. 24, the Supreme Court of India has held that *a right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted.*

14. The Constitution Bench of the Supreme Court in *Kartar Singh vs. State of Punjab* (1994) 7 SCC 569 has held as under:

*“278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:*



Neutral Citation Number 2023:DHC:4887-DB

- (1) *to destroy or weaken the evidentiary value of the witness of his adversary;*
  - (2) *to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;*
  - (3) *to show that the witness is unworthy of belief by impeaching the credit of the said witness;*
- and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."*

15. Right of a party to cross-examination the witness of the adverse party besides being a natural right is a statutory right and such an opportunity cannot be denied. Cross examination is the acid test of the truthfulness of the statement made by the witness who has been examined in chief. In the present case, the manner in which the Trial Court has proceeded has actually denied the defendant/appellant an opportunity to cross-examine the witnesses of the respondent/plaintiff and leading its own evidence.

16. Further, it may be noticed that as on 08.02.2023, when the defense of the appellant/defendant was struck off even the evidence of the Plaintiff was not completed. The Plaintiff's witnesses were still under cross examination. Even if the defense of the Defendant was struck off the defendant still had the right to cross examine the Plaintiff's witnesses. In the absence of the evidence of the plaintiff



Neutral Citation Number 2023:DHC:4887-DB

being completed, the court could not decided the issues in favour of the Plaintiff as the onus of proving the issues was placed on the Plaintiff and the trial could not have relied upon their testimony and exhibited documents and passed a decree in favour of the Plaintiff.

17. Accordingly, we are of the view that the impugned order dated 08.02.2023 closing the evidence of the parties and the resultant judgment dated 15.04.2023 is not sustainable. The same is, accordingly, set aside. The Suits are accordingly restored to their original number on the record of the learned District Judge.

18. Parties shall appear before the concerned Court for directions on 05<sup>th</sup> August, 2023.

19. It is further agreed between the parties that they shall request the Local Commissioner to record evidence preferably on a day-to-day basis. It is further agreed between the parties that the fee of the Local Commissioner, i.e., Rs.5,000/- per sitting henceforth shall be shared equally between the parties.

20. The appeals are allowed in the above terms.

**SANJEEV SACHDEVA, J**

**MANOJ JAIN, J**

**JULY 11, 2023**

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