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

Date of decision: 12.09.2023

+ CM(M) 1472/2023 & CM APPLs. 46831/2023, 46832/2023

M/S EOS DEVELOPERS PVT LTD Petitioner

Through: Mr. Tushar Roy and Ms. Kinnori
Ghosh, Advocates.

versus

M/S CYAN FINANCIAL SOLUTIONS
PVT LTD

..... Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 46832/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1472/2023 & CM APPL. 46831/2023

1. This petition filed under Article 227 of the Constitution impugns the orders dated 10.04.2023 and 24.04.2023 passed by District Judge (Commercial Court-03), Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in CS (COMM) No. 268/20, titled as *M/s Cyan Financial Solutions Private Limited v. M/s EOS Developers Private Limited & Ors.*, allowing two (2) separate applications filed by the Respondent.

1.1 The Petitioner herein is the defendant and the Respondent is the



plaintiff in the suit. The civil suit has been filed for recovery of Rs. 60,03,768 plus pendente lite and future interest.

1.2 The Trial Court *vide* order dated 10.04.2023 allowed the application filed by the Respondent for changing its authorised representative from Mr. Yugavart Aggarwal to Mr. Ashu Goenka.

1.3 The Trial Court *vide* order dated 24.04.2023 has allowed the application filed by the Respondent under Order 7 Rule 14 of the Code of Civil Procedure, 1908 ('CPC') for placing on record additional documents subject to payment of costs of Rs. 12,000 to the Petitioner herein.

Impugned Order dated 10.04.2023

2. With respect to the order dated 10.04.2023, learned counsel for the Petitioner states that though in law the authorised representative can appear, plead and act on behalf of the plaintiff, however, he cannot become a witness on behalf of the plaintiff unless he has personal knowledge in the matter. In this regard, he relies upon the judgment of the Supreme Court in ***Janki Bhojwani and Ors. v. Indusind Bank Ltd & Ors, (2005) 2 SCC 217*** in support of the said statement.

3. This Court has perused the application and record.

4. The application is duly supported by the extract of the minutes of the meeting dated 03.04.2023 filed by the plaintiff authorising its Director Mrs. Bimla Aggarwal to execute a power of attorney in favour of Mr. Ashu Goenka authorising him to represent the plaintiff company in all proceedings by or against the company. In furtherance of the said resolution, a General Power of Attorney ('GPA') has been executed by Ms. Bimla Aggarwal in favour of Mr. Ashu Goenka. In the opinion of this Court, therefore, the order of the Trial Court allowing the said application relying upon the judgments of the



Supreme Court referred to in the impugned order does not suffer from any infirmity in law or in fact.

5. As regards the objection of the Petitioner herein that Mr. Ashu Goenka is not competent to step into the witness box, in the impugned order, the Trial Court has taken note of the said fact/objection and kept the issue specifically open in its order dated 10.04.2023 which reads as under:

“As far as authority of the above AR to step into witness box and depose the facts of the case, the objection is kept open. Ld. Counsel for defendant has brought judgement in support of his case titled "Mohinder Kaur VS Sant Paul Singh," 2869-2870 decided by Hon'ble Supreme Court of India on 01.10.2019. This judgment is discussed in judgment "Janki Bhojwani and Ors. VS Indusind Bank Ltd and Ors, (2005) 2 SCC 217,"

(Emphasis supplied)

6. In view of the above, this Court finds that the challenge to the order dated 10.04.2023 is without any merit and the same is dismissed.

Impugned Order dated 24.04.2023

7. With respect to the challenge to the order dated 24.04.2023, it is noted that the said order allows the application filed by the Respondent under Order 7 Rule 14 CPC subject to payment of costs of Rs. 12,000 to be paid by the Respondent.

8. At the outset, on a query put to learned counsel for the Respondent, he admits that the costs of Rs. 12,000 imposed by the Trial Court has been duly received by the Petitioner herein.

9. The Petitioner is precluded from challenging the said order having accepted the said costs unequivocally and without any demur. In this regard, reference may be had to the judgment of a Coordinate Bench of this Court in ***Vikramaditya Bhartia v. DDA, 2011 SCC OnLine Del 3761*** at paragraph 5 therein which reads as under:

“5. Lord Atkin in the House of Lords in United Australia Ltd. v. Barclays



Bank Ltd. (1940) 4 ALL. E.R. 20 held that if a man is entitled to one of the two inconsistent rights, it is fitting that when with full knowledge he has done an unequivocal act showing that he has chosen the one, he cannot afterwards pursue the other, which after the first choice is by reason of the inconsistency no longer his to choose. The said principle has also been applied by the Courts in dealing with challenges to orders of the Court after acceptance of costs. It has been held that acceptance of costs amounts to acceptance of the order as correct and having taken benefit of one part of the order, a party cannot turn around and say that he will also challenge the order. It has been held that by allowing the party to challenge the order amounts to nullifying the acceptance of costs; a litigant cannot approbate and reprobate; he had two options, either to accept the costs and treat the order as correct or not to accept the costs and to challenge the order; having elected to accept the costs, he is estopped from thereafter challenging the order.”

(Emphasis supplied)

10. Further, the fact that the Petitioner had received the costs has not been disclosed in the petition and to that extent the petition suffers from the vice of suppression. Learned counsel for the Petitioner has expressed unconditional apology for not disclosing the said fact. However, this Court is refraining from imposing costs on the Petitioner for withholding the said facts in view of the apology tendered by the counsel.

11. Therefore, this petition impugning the order dated 24.04.2023 is not maintainable and the same is accordingly dismissed.

Delay and laches

12. It is, further, noted that though the impugned orders are dated 10.04.2023 and 24.04.2023 respectively, the Petitioner has elected to impugn the said orders belatedly by filing this petition on 06.09.2023 on the eve of the hearing scheduled before the Trial Court.

13. The matter is listed before the Local Commissioner on 14.09.2023 for recovery of evidence and therefore filing of this petition is clearly an attempt to delay the trial; this Court, therefore also finds that in the facts of the present case, the present petition is barred by delay and laches.



14. Accordingly, for the reasons stated hereinabove, the present petition is dismissed.

15. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 12, 2023/msh/sk

Click here to check corrigendum, if any