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

Date of decision: 18.12.2023

+ CM(M) 2092/2023 & CM APPL. 65490/2023

NARESH KUMAR GARG

..... Petitioner

Through: Mr. Vibhav Mishra, Advocate

versus

**M/S BTW INDIA PVT LTD THROUGH ITS AUTHORISED
REPRESENTATIVE SH SATYAVEER** Respondent

Through: Mr. Varun Sikka, Advocate
(Through VC)

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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. 65491/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 2092/2023 & CM APPL. 65490/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 13.10.2023 passed by the ADJ-04, North West District, Rohini Courts, Delhi ('Trial Court') in civil suit bearing CS DJ No. 577269/2016, titled as '**BTW India Pvt. Ltd. v. Naresh Kumar Garg**', whereby the Trial Court closed the Petitioner i.e., the defendant's, right to lead evidence in exercise of its jurisdiction under Order XVII of Code of



Civil Procedure, 1908 ('CPC').

2. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit filed seeking recovery of Rs. 22,74,385/- along with pendente lite and future interests.

3. Learned counsel for the Petitioner i.e., defendant states that the defendant be put to costs and he undertakes to the Court that defendant's witness shall remain present before the Trial Court on 20.12.2023 for his examination and cross-examination.

4. In reply, learned counsel for the Respondent, who appears on advance notice states that this Court may grant an opportunity to the defendant to lead evidence, subject to strict terms.

5. This Court takes note of the fact that though the impugned order was passed on 13.10.2023, the Petitioner has elected to file this petition and have it listed on 18.12.2023 at the eleventh hour. The said action of the Petitioner reflects lack of *bona fide*.

6. However, by way of last opportunity and with a view that the matter should be decided on merits, with the consent of the parties, the following directions are being passed: -

- (i) The Petitioner will pay cost of Rs. 40,000/- to the Respondent before the Trial Court on 20.12.2023.
- (ii) Subject to the Petitioner making payment of costs, the Petitioner will be entitled to lead defendant's evidence and the proposed DW-1 shall remain present in Court on 20.12.2023.
- (iii) In case, the Petitioner fails to make payment of costs and/or his witness is not present on 20.12.2023, the liberty granted by this order shall stand exhausted and the impugned order dated 13.10.2023 shall



operate and bind the parties.

7. Learned counsel for the Petitioner has undertaken to this Court that Petitioner shall remain duly represented before the Trial Court on each date of hearing and not seek any adjournment. The said statement is taken on record and the Petitioner is bound down to the statement.

8. This Court has examined the impugned order. In the facts and circumstances of this case, there is no infirmity in the impugned order and it is only by way of a last opportunity that the Petitioner herein is being granted permission to lead defendant evidence on the terms set out hereinabove.

9. With the aforesaid directions, the present petition stands disposed of. Pending application stand disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 18, 2023/rhc/aa

Click here to check corrigendum, if any