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

*Date of decision: 27.09.2023*

+ CM(M) 662/2017 & CM APPL. 22744/2017

HARYANA JEWELLERS ..... Petitioner  
Through: Mr. Gandharv Anand, Advocate

versus

KUSHAL INFRAPROJECT INDUSTRIES  
(INDIA) LTD ..... Respondent  
Through: Mr. Pratham Sharma, Advocate

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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):**

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 07.06.2017 passed by the ADJ-12, Central District, Tis Hazari Courts, Delhi ('Trial Court') in suit no. 612/2016 (New No. 16334/2016), titled as '**Haryana Jewellers v. Kushal Infraproject Industries India Ltd.**', whereby an application filed by the Petitioner under Order XVIII Rule 17 Code of Civil Procedure, 1908 ('CPC') for effectively recalling the order dated 28.09.2016 was dismissed.

1.1 The Trial Court vide order dated 28.09.2016 closed the evidence of the plaintiff due to the non-presence of the plaintiff's witness. On the said date counsel for the defendant made a statement that since the plaintiff has failed to lead any evidence, the defendant as well does not propose to lead any evidence.



1.2 In this manner, the defendant's evidence also stood closed on 28.09.2016 and the matter was fixed for final arguments.

1.3 The proceedings before the Trial Court were stayed by this Court vide order dated 30.06.2017.

2. Learned counsel for the Petitioner states that the non-presence of the Petitioner on 28.09.2016 was for reasons beyond his control. He states that a last and final opportunity be granted to the Petitioner to lead evidence and the Petitioner is willing to compensate the Respondent with costs for the delay caused. He states that Petitioner undertakes to remain duly represented before the Trial Court on each date and not seek any adjournment.

3. In reply, learned counsel for the Respondent states that the order dated 28.09.2016 was justified in the facts of the case. In this regard he refers to the previous orders of the Trial Court including the order dated 18.07.2015, which show that the plaintiff's witness remained absent despite several opportunities. He states that the plaintiff was negligent in prosecuting the suit.

3.1 He however, states that without prejudice to his rights and contentions, he has no objection if the impugned order is set aside and the plaintiff is granted a final opportunity to lead evidence, subject to the plaintiff being put to strict terms. He states that in these changed circumstances, the defendant as well be granted an opportunity to lead evidence.

4. Accordingly, with the consent of the parties, the impugned order dated 28.09.2016 and 07.06.2017 are set aside on the following terms:

4.1 The plaintiff shall remain present before the Trial Court on 21.11.2023 i.e., the next date of hearing and on each subsequent date thereafter, until his evidence is recorded and his cross-examination is completed.

4.2 The plaintiff shall pay cost of Rs. 15,000/- to the Respondent within



two (2) weeks from today and file the proof of payment before the Trial Court.

4.3 It is made clear that if there is any delay in making payment of costs within the time granted by this Court, a further cost of Rs. 10,000/- will become payable by the plaintiff to the defendant.

4.4 The Petitioner shall remain duly represented before the Trial Court on each date and not seek any adjournment.

5. Learned counsel for the Petitioner states that other than the plaintiff himself, the Petitioner will at most, examine one (1) more witness and no further. The said statement is taken on record. It is directed that in case the Petitioner proposes to lead another witness, he will file his list of witness naming the said another witness within a period of two (2) weeks from today before the Trial Court, failing which his right to lead evidence of another witness shall also stand closed.

6. Since the order dated 28.09.2016 has been set aside, the defendant will also be at liberty to lead defendant's evidence after the plaintiff's evidence is closed. The defendant will file the affidavit(s) by way of evidence of its witnesses within three (3) weeks after the plaintiff's evidence has been closed.

7. With the aforesaid directions and consent of the parties, the present petition is disposed of. Pending application is disposed of. Interim orders stand vacated.

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 27, 2023/msh/aa**

*Click here to check corrigendum, if any*