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

+ CRL.M.C. 618/2024 & CRL.M.A. 2579/2024

M/S TITOO STATIONERY AND BOOKS STORES Petitioner

Through: Mr. M. Hasibuddin, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Digam Singh Dagar, APP for
State.

Mr. Ashwani Kumar, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.02.2024

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1. This petition has been filed on behalf of the Petitioner under Section 482 Cr.P.C. laying a challenge to impugned order dated 08.01.2024 passed in Criminal Revision No. 186/2023 by learned Additional Sessions Judge (Special Judge NDPS), North-East District, Karkardooma Court, in case titled '*M/s Titoo Stationary & Books Stores vs. M/s Prism Books and Educational Supplier*', dismissing the revision filed against the order dated 12.09.2023 as well as to order dated 12.09.2023 passed by learned MM-01, North East District, Karkardooma Court in Ct. Case No.552/2019, whereby the learned Magistrate has closed the right of the Petitioner to cross-examine the Complainant. Petitioner Company through its Proprietor was the accused and Respondent No.2 Company through its Proprietor was the Complainant before the Trial Court and the parties are hereinafter referred to by their litigating status before this Court.

2. Factual matrix to the extent relevant and necessary is that Respondent filed a complaint under Section 138 of Negotiable Instruments Act, 1881



(‘NI Act’) on account of dishonour of two cheques issued by the Petitioner, dated 24.01.2019 for a sum of Rs.24,36,385/- and cheque dated 28.01.2019 for a sum of Rs.28,97,382/-, respectively. Summons were issued to the Petitioner vide order dated 05.04.2019. On 02.04.2022, Petitioner appeared before the Court and furnished his bail bond and on the same day, notice under Section 251 Cr.P.C. was framed against the Petitioner, to which he pleaded ‘not guilty’ and claimed trial. Matter was adjourned to 06.06.2022 for Respondent’s evidence, on which date due to illness of Petitioner’s counsel, evidence was not led and case was adjourned to 26.09.2022, when Respondent was absent and the next date given by the Trial Court was 23.02.2023. Petitioner appeared on the said date before the Court, but as the main counsel representing him was unwell, he requested for an adjournment, which was granted subject to cost of Rs.2,000/- and the matter was directed to be listed for cross-examination of the Respondent on 25.04.2023 at 12:30 PM. Due to the death of the grandfather of the complainant, he did not appear on the said date and the case was adjourned to 01.06.2023. On this date, counsel for the Petitioner sought adjournment as the file had not been received from the previous counsel. Previous cost was, however, paid to the Respondent. Court granted adjournment, fixing the matter for 12.09.2023, subject to cost of Rs.3,000/-. When the matter was called on 12.09.2023, Petitioner appeared with his newly appointed counsel, who sought adjournment for cross-examination stating that earlier counsel had not handed over the case file. On opposition being raised by the counsel for the complainant, Trial Court closed the right of the Petitioner to cross-examine the Respondent and adjourned the matter to 06.11.2023, for recording the statement of the accused.



3. Aggrieved with the order dated 12.09.2023, Petitioner filed a revision petition being CRL. REV. No. 186/2023 before the learned District and Sessions Judge, which was finally dismissed vide order dated 08.01.2024, on the ground that Petitioner had deliberately adopted delaying tactics and was hampering the trial proceedings. Assailing both the orders and seeking opportunity to cross examine the complainant, Petitioner filed the present petition.

4. Perusal of order dated 12.09.2023, passed by the learned MM shows that Petitioner's right of cross examination was closed on the ground that final opportunity had already been granted on 01.06.2023, subject to payment of cost of Rs.3,000/- and Petitioner was guilty of adopting delaying tactics. Revision Court upheld the order of the learned MM on similar grounds reiterating that Petitioner was adopting delay tactics from the beginning and since the amounts involved under the dishonoured cheques were huge, there was a *malafide* and deliberate intent to delay the trial.

5. Learned counsel for the Petitioner argues that the Trial Court and the Revision Court have erred in observing that Petitioner was deliberately adopting delay tactics and/or had a *malafide* intent as the amounts involved under the cheques in question were huge. Adjournments were sought as the arguing counsel was unwell on two dates, for which the Petitioner cannot be blamed. Adjournments were subject to costs which were duly paid. It is a settled law that litigants should not suffer for the fault of a counsel. Realizing that the erstwhile counsel engaged by the Petitioner was not appearing before the Court, due to ill-health, he changed the lawyer, so that the matter could be contested diligently. As the new counsel had been recently engaged, he did not have the case file and requested the learned Trial Court to adjourn the matter on this ground. Without appreciating the



practical difficulty of a newly engaged counsel, who had not received the file, Trial Court erroneously closed the right of cross-examination with unwarranted observations that the Petitioner was adopting delaying tactics. It is also contended that the right available to an accused to cross examine the Complainant during trial proceedings, is a valuable right and if the impugned orders are not set aside, grave prejudice shall be caused to the Petitioner, who has a good case on merits.

6. Learned counsel for Respondent No.2, *per contra*, opposes the petition and submits that there are concurrent findings of both the Courts that Petitioner has been taking unnecessary adjournments as a delay tactic and did not cross examine the Respondent, despite several opportunities to do so, even after costs were imposed. Without prejudice to this contention, it is urged that if the Court is inclined to allow the petition and grant opportunity to the Petitioner to cross examine, it must be by way of a last opportunity and that too, subject to payment of exemplary costs to Respondent No.2, who is unnecessarily suffering due to prolonged trial.

7. I have heard learned counsels for the Petitioner and Respondent No.2 and learned APP for the State.

8. Perusal of the order sheets of the Trial Court indicates that after the pre-summoning evidence, Petitioner was summoned by the Trial Court and his bail bonds were accepted on 02.04.2022. The case was fixed for cross-examination of the Complainant on 06.06.2022, on which date adjournment was sought on account of health issues of the counsel for the Petitioner. Matter was adjourned to 26.09.2022 for Complainant's evidence, on which date, case was adjourned to 23.02.2023, since the Complainant had not appeared on time. Trial Court acceded to the request of the Petitioner for an adjournment on 23.02.2023, as his counsel was unwell, subject however, to



cost of Rs.2,000/-. On 25.04.2023, matter was adjourned as the grandfather of the Complainant had expired. When the case came up on 01.06.2023, previous cost was paid by the Petitioner and his counsel, who had been newly engaged, sought an adjournment as the file had not been received from the previous counsel. Adjournment was opposed by the Complainant, but was granted by the Trial Court, subject to cost of Rs.3,000/- and final opportunity was given for cross-examination on 12.09.2023. As the file was still not received by the counsel for the Petitioner from the previous counsel, request was made to the Trial Court to adjourn the matter, which request was declined, on account of earlier adjournments, observing that Petitioner was indulging in delay tactics. By order dated 12.09.2023, Trial Court closed the right of the Petitioner to cross examine the Complainant and this order was upheld by the Revision Court for the same reasons i.e. number of opportunities taken by the Petitioner to cross examine and that he was indulging in delay tactics with a *malafide* intent.

9. It needs no reiteration that a party which adopts dilatory tactics cannot be granted indulgence by the Court. Order sheets of the present case, however, reveal that it is not correct for the Complainant to contend that all adjournments before the Trial Court, at the stage of Complainant's evidence, were attributable to the Petitioner, since on two dates the case was adjourned due to non-availability of the Respondent. This is, however, not to state that Petitioner was not at all responsible for adjournments. On two occasions, adjournment was sought by the Petitioner as the main counsel representing him was unwell and costs were imposed by the Trial Court, which were admittedly paid. Realizing that the counsel was not appearing and prejudice was being caused to the Petitioner, who was suffering orders of costs, he exercised the option of changing his counsel and appointed a new counsel.



Unfortunately for the Petitioner, after the new counsel was appointed, the files could not be retrieved from the earlier counsel leading to a situation where again adjournment was sought on two occasions. Construing this to be an act of dilatory tactic on the part of the accused, the Trial Court closed the right of cross-examination. On the adjournments, both sides have their respective stands to put forth. Learned counsel for Respondent contends that Court should not grant indulgence to the Petitioner as the trial has prolonged due to unnecessary adjournments taken on his behalf while learned counsel for the Petitioner argues to the contrary and submits that Petitioner should not suffer for non-appearance of the counsels, more so when a valuable right of cross-examination has been lost, which will prejudice the Petitioner during the trial, as he has a good case on merits.

10. This Court tends to agree with the counsel for the Petitioner that the right available to an accused to cross examine the Complainant during trial is a valuable right. The rule of putting the accused's version in cross-examination is a rule of justice and not a mere formality or a technicality, as held by the Supreme Court in *Muddasani Venkata Narsaiah (DEAD) through legal representatives v. Muddasani Sarojana, (2016) 12 SCC 288*. It is settled that the effect of not cross-examining the complainant/witness is that their statements remain undisputed and unrebutted and cause prejudice to the accused. It is equally settled that a party which is not vigilant in prosecuting its case must not be granted any concession by the Court.

11. In the facts of the present case, this Court is unable to conclude that all adjournments before the Trial Court were on account of the Petitioner at the stage of Complainant's evidence and as noted above, Complainant had also sought adjournments *albeit* for justified reasons. Be that as it may, this Court is of the view that it would be in the fitness of things to grant one last



opportunity to the Petitioner to cross examine the Complainant so that no prejudice is caused to him during the trial.

12. In view of the aforesaid facts and circumstances, present petition is allowed and impugned orders dated 12.09.2023 and 08.01.2024 are set aside, subject to Petitioner paying cost of Rs.50,000/- to Respondent No.2 on the date fixed before the Trial Court, which is stated to be 12.03.2024. Trial Court shall permit the Petitioner to cross examine the Complainant and fix a date for the said purpose. It is, however, made clear that if the Petitioner fails to avail this last opportunity, no further opportunity will be granted by the Trial Court and the case shall proceed further.

13. Petition stands disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J

FEBRUARY 26, 2024/kks/shivam