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

+ **CM(M) 1847/2024**

**PRADEEP KUMAR**

..... Petitioner

Through: **Mr. Nikhil Kr. Singh and Mr. Shubham Jhunjunwala, Advs.**

versus

**BSES RPL LTD AND ORS**

..... Respondent

Through: **Mr. Rishab Raj Jain, Standing Counsel with Mr. Sharique Hussain, Adv for R-1.**

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

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**09.02.2024**

**CM APPL. 8152/2024—Exp.**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**CM(M) 1847/2024 and CM APPL.-8153/2024--stay**

3. The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 20.09.2023, 21.11.2023 and 10.01.2024 passed in CS SCJ No. 399/2017 titled as 'Pradeep vs. BSES Rpl Ltd. & Ors.', by the learned SCJ-CUM-RC, District South-West, Dwarka, New Delhi (hereinafter the 'Trial Court'), whereby the right to lead evidence on behalf of the petitioner, who is plaintiff before the learned Trial Court, has been closed.
4. Issue notice. Learned counsel for respondent no. 1 appears on advance notice and accepts notice.



5. It is submitted that after framing of the issues, the first date for leading the evidence of the petitioner was fixed on 08.08.2023, as the application filed under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (CPC) was not disposed of therefore, the evidence affidavit was not prepared for the petitioner assuming that the arguments shall be addressed on the application on the fixed date and after the disposal of the application, the petitioner's evidence shall be led.

6. The learned counsel submits, however, on 01.08.2023, the learned Trial Court adjourned the matter by granting an opportunity to the petitioner subject to the cost of Rs. 1,000/- and the matter was posted for 20.09.2023 for recording the evidence of the petitioner. Learned counsel further submits that unfortunately on the said date of hearing, the petitioner was suffering from a knee problem and his evidence affidavit could not be prepared, therefore, the proxy counsel on behalf of the petitioner appeared before the learned Trial Court and made the submissions requesting for an adjournment. Though, the learned Trial Court granted an adjournment, however, did not acknowledge the medical ground for adjourning the matter and imposed a cost of Rs. 3,000/- and posted the matter for 21.11.2023 for evidence of the petitioner.

7. The learned counsel submits that inadvertently a wrong date of hearing was intimated learned proxy counsel to the counsel of the petitioner which he had recorded as '21.12.2023'. In the meanwhile, on 21.11.2023, the learned Trial Court had closed the right to lead evidence on behalf of the petitioner as no evidence affidavit was filed and even there was no appearance for the petitioner before the learned Trial Court.

8. Learned counsel submits that the petitioner has no intention to avoid



the date of hearing or not to lead his evidence but the circumstances were beyond the control of the petitioner which fact is not considered by the learned Trial Court, therefore, the petitioner be granted an opportunity to lead the evidence. Otherwise, he will loose his case without there being a trial.

9. The petition has been opposed on behalf of the respondent no.1. He submits that the petitioner has not paid the cost vide which the adjournments were granted to him, and even the list of witnesses is not filed till date. This clearly shows that petitioner is not interested to pursue his case but is causing unnecessary harassment to the respondent by dragging the respondent in futile litigation.

10. Undisputedly, the petitioner being the plaintiff before the Trial Court should have been vigilant about his rights to pursue the suit diligently, however, despite being granted two opportunities, neither the list of witnesses was filed nor the evidence affidavit was filed by the petitioner. So much so, he also avoided the payment of cost.

11. At this stage, it is submitted on behalf of the petitioner that only three witnesses are to be examined by the petitioner i.e. two official witnesses and the petitioner himself. The learned counsel further undertakes to file the evidence affidavit, list of witnesses along with application for summoning the official witnesses on or before the next date of hearing before the learned Trial Court with an advance copy to the other side.

12. Thus, in the interest of justice, and the submissions made hereinabove, the petitioner is granted an opportunity to lead the entire evidence subject to the cost of Rs. 10,000/- in addition to which has already been imposed by the Trial Court to be paid before the learned Trial Court on



the next date of hearing. The evidence of the petitioner shall be recorded on the date of hearing already fixed by the learned Trial Court.

13. It is made clear that in case it is not convenient for learned Trial Court to record the entire evidence of the petitioner on the date already fixed i.e. 13.02.2024 before the learned Trial Court, the learned Trial Court may consider to record the remaining evidence on the next date of hearing subject to its convenience.

14. It is further made clear that no adjournment shall be granted to any of the parties by the learned Trial Court on any ground whatsoever when the witnesses shall be present for their examination.

15. In view the above directions, the present petition stands disposed of.

**SHALINDER KAUR, J.**

**FEBRUARY 9, 2024**

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