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

+ CM(M) 151/2019, CM APPL. 4031/2019--stay

CHAHAT CREATION PVT LTD Petitioner

Through: Mr. Manish Kaushik and Mr. Mishal Johari, Advs.

versus

SUNITA RANI & ANR Respondents

Through: Mr. Sahdev Singh Tomar, Advocate.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER
04.03.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 03.01.2019 passed by the Learned ACJ-cum-CCJ-cum-ARC, North West, Rohini Courts, Delhi ("Trial Court") in suit no. 33367/2016 titled as "*Chahat Creation Pvt. Ltd. vs Sunita Rani & Ors*" whereby the Learned Trial Court did not grant an adjournment to the petitioner upon his request and thereafter closed the petitioner's evidence. The petitioner herein is the plaintiff before the learned Trial Court in the captioned suit.

2. The petitioner is a private limited company having its registered office at KD-179, Main Road Pitam Pura, Near Kohat Metro Station, Delhi 110088 and is engaged in the business of sale & manufacture of fabric. The



respondent no. 1 is the proprietor of M/s Bru International and respondent no. 2 is her husband Sh. Sushil Kumar Jogi is authorized signatory on behalf of respondent no. 1.

3. Specifics of the present case are such that in 2011, the petitioner and respondents allegedly entered into a business arrangement for the supply of goods (fabric materials) and a certain sum to the tune of Rs. 2,95,801 was due against the invoices raised by the petitioner against the respondents.

4. It is the case of the petitioner that respondents in order to discharge liability, issued cheques to the amount due i.e. 2.95 lakhs. Thereafter, the said cheques were dishonored by the bank and consequently in June, 2011, the petitioner filed a civil suit under Order XXXVII CPC seeking recovery of Rs. 2.95 lakhs along with interest at 24% per annum, against the respondents based on the cheques executed by them. The petitioner also filed a separate proceeding under Section 138 of the Negotiable Instruments Act, 1881 (“NIA”) before the court of Metropolitan Magistrate, Rohini Court, Delhi (hereinafter as “M.M.”).

5. Subsequent thereto, the respondents moved an application in the civil suit, seeking leave to defend the aforesaid suit, which came to be dismissed by the learned Trial Court vide order dated 14.08.2013 and the suit was decreed in favour of the petitioner. In the meanwhile, the proceedings under Section 138 of NIA were dismissed by the learned MM vide judgement dated 12.02.2015.

6. Aggrieved by this, the respondents preferred an appeal under Section 96 of Civil Procedure Code, 1908 (“CPC”) read with Section 41 CPC against the order dated 14.08.2013 bearing on RCA No. 100/2013 before the ADJ -02, North-West, Rohini Courts, Delhi. The aforesaid appeal also came



to be dismissed vide order dated 23.10.2015.

7. Thereafter, a regular second appeal bearing no. 20/1016 was filed by the respondents before this court impugning the judgements of the courts below. Subsequently in the proceedings, this Court vide order dated 24.08.2016 granted liberty to the parties to file all other documents, provided they are impeachable documents in support of their respective cases. Thereafter, the petitioner filed an additional affidavit along with a communication dated 13.02.2011, which was on the letter head of the company of the Respondents. Furthermore, this Court vide order dated 13.02.2017 allowed the appeal and set aside the orders impugned and granted the respondents the leave to defend subject to depositing the amount of Rs. 2,96,801 within 2 weeks to be kept in FDR with a nationalized bank and directed the learned Trial Court to expeditiously dispose of the case before it, preferably within one year.

8. Subsequently, evidence by way of affidavit of PW1, Sanjay Kumar Sethi was filed by the petitioner before the learned Trial Court on 23.09.2017.

9. On 24.05.2018, the Petitioner filed an application for issuance of the court summons as witness for the appearance of the Concerned Alhmad from the Court of Learned Metropolitan Magistrate, North West, Rohini, New Delhi to produce the complete record of the proceedings in Section 138 of Negotiable Instruments Act in CC No. 14664/1/11 and the learned Trial Court directed the witness to be summoned upon filing of PF, for the next date of hearing i.e. 02.06.2018.

10. However, as the record was not produced, the learned Trial Court on 07.09.2018 warned the Alhmad to remain careful in future and directed the



process for summoning of the witness to be issued immediately for 26.09.2018.

11. Thereafter, the learned Trial Court vide impugned order dated 03.01.2019 declined the adjournment requested by the petitioner to lead the evidence which was objected to by the respondents submitting that the petitioner is deliberately delaying the proceedings of the case and keeping in view of the directions passed by this Court vide order dated 13.02.2017 in RSA No. 20/16, to the learned Trial Court to expeditiously dispose of the case within 1 year dismissed the application. Consequently, petitioner's evidence was closed and the matter was listed for defendant's evidence vide the impugned order.

12. Aggrieved with the impugned order, the petitioner preferred a review application against the order dated 03.01.2019 which was dismissed by the learned Trial Court vide order dated 18.01.2019. Thus, the present petition came to be filed before this Court assailing the impugned order.

13. The learned counsel for the petitioner submits that a copy of the additional affidavit filed before this court in RSA No. 20/2016 was filed by the petitioner before the learned Trial Court on 23.09.2017 and was taken on record vide the impugned order, thus the learned Trial Court could not have closed the evidence of the petitioner as records of the learned MM were not produced before it. Learned counsel further submits that since the filing of the evidence affidavit in 2017, appropriate steps have been taken to call the records from the MM court in Rohini Court Complex however, the learned Trial Court wrongly closed the evidence of the petitioner.

14. Learned counsel for the petitioner submits that the review application filed by the petitioner was dismissed without considering the fact that



petitioner took steps to summon records and the petitioner's witness was present in court for leading evidence on 03.01.2019 and also on 18.01.2019.

15. The learned counsel further submits that summoning of the records from the court of learned MM, Rohini before the learned Trial Court is necessary as the said records contain original cheques and invoices which are vital for the just disposal of the civil suit pending before the learned Trial Court.

16. Controverting the submissions of the petitioner, the respondents contended that the present petition is abuse of process of law. The petitioner failed to produce the witnesses and to lead evidence despite various opportunities given to him. The petition has been filed only with an intention to further delay the proceedings. In fact, there is no merit in the case of the petitioner and the present petition has been filed to improve his case by the petitioner. Also, the petitioner has not disclosed about various dates when due to non-availability of the petitioner, the evidence could not be recorded. It is submitted that the impugned order has been passed after considering the record and submissions of the parties and thus requires no interference by this Court.

Reasoning and Conclusion

17. It is undisputed that since 02.06.2018 till 03.01.2019, the learned Trial Court granted abundant opportunities to the petitioner to lead his evidence. On 24.05.2018 on the application moved on behalf of the petitioner to summon witnesses was allowed and the matter was listed for 02.06.2018. On the said date of hearing an adjournment was requested by the petitioner which was allowed, subject to cost of Rs. 1,000/- and the matter was further listed for 03.08.2018. On 03.08.2018, no witness was present as process fee



was deposited late by the petitioner for summoning of the record and the witness was allowed to be summoned afresh listing the case for 07.09.2018. When the matter was taken up on 07.09.2018, the court observed that the witness was not present due to fault of the Alhmad of the court and thus posted the matter for 26.09.2018. On the said date of hearing against at the request of the petitioner, matter was posted for 12.10.2018. However, on the subsequent date of hearing on 16.11.2018 once again last and final opportunity was granted for PE to the petitioner as adjournment was requested on medical ground of the witness of the witness and thus the case was listed for 17.12.2018 for PE.

18. Arguments in details are addressed on behalf of the parties, the Trial Court Record, the impugned order and the record of this Court has been perused.

19. Needless to say that the petitioner has highlighted only the date of hearing i.e., 07.09.2018 when the witness could not be summoned due to the fault of the Alhmad of the court, however, as per record various adjournments were requested by the petitioner including the request made for non-availability of the witness on medical grounds. Finally on 03.01.2019, the learned Trial Court closed the petitioner's evidence.

20. Taking the overall view of the circumstances and the submissions as put forth by the parties and the fact that the witnesses of the defendant have yet not been cross examined, in the interest of justice, one single opportunity is granted to the petitioner to lead its entire evidence on the date to be fixed by the learned Trial Court as per its convenience, subject to cost of Rs. 25,000/- to be paid by the petitioner to the respondents before the learned Trial Court. Consequently, the petition is allowed. The impugned order



dated 03.01.2019 is set aside. Pending application also stands disposed of.

SHALINDER KAUR, J.

MARCH 04, 2024
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