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

+ **CM(M) 2027/2024**

SAPAN AHLAWAT & ANR.

..... Petitioners

Through: Mr. Mandeep Baisla, Adv.

versus

MOHAN CLOTHING COMPNAY PVT. LTD. Respondents

Through: Mr. Naresh Gupta and Mr. Rachit
Gumber, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

04.03.2024

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CM APPL. 13379/2024(exemption)

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

CM(M) 2027/2024, CM APPL. 13380/2024--stay

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 19.02.2024 passed by the learned District Judge (Commercial Court-04), Central district, Tis Hazari Courts, Delhi ("Trial Court") in CS DJ No.2070/2018 titled as "*Mohan Clothing Company Pvt. Ltd. vs. Sapan Ahlawat and Anr.*", whereby the right of the petitioner herein to address final arguments was closed. The petitioners herein are the defendants before the learned Trial Court.
4. Mr. Naresh Gupta, Learned counsel for the respondent appears on advance notice and accepts notice.



5. Learned counsel for the petitioners submits that the respondent herein had filed a suit for recovery of Rs. 14,36,441/- against the petitioners on 02.07.2018. Vide order dated 16.10.2019, application under Order VI Rule 17 Civil Procedure Code (hereinafter referred to as “CPC”) filed by the petitioners was dismissed. Issues were framed vide order dated 23.02.2023. Thereafter, respondents evidence was closed on 15.09.2023 and the matter was put up for petitioners evidence on 12.10.2023 and 13.10.2023. Subsequently, petitioners couldn't appear on 12.10.2023 and hence learned Trial Court imposed cost of Rs. 5,000/- and matter was listed for 02.11.2023. Learned Trial Court closed petitioners evidence and fixed the matter for final arguments on 30.11.2023 and 01.12.2023.

6. The learned counsel submits that the petitioner had moved a CM(M) 146/2024 before this Court which is pending adjudication impugning the order of the learned District Judge Commercial Court vide which the application filed by petitioner under Order VIII Rule 1A(3) CPC to place on record additional documents was dismissed. It is submitted that the trial before the learned District Judge, Commercial Court continued and the case was at the stage of hearing of the final arguments.

7. The learned counsel submits that although the learned Trial Court had granted three opportunities to the petitioner to address arguments however, the same opportunities were not fruitful as due to certain compelling reasons the petitioners could not advance final arguments before the learned Trial Court. It is submitted that on two dates of hearing i.e. on 03.02.2024 and 06.02.2024 there was a bereavement in the family of the advocate Mr. Sanjay Kumar who had been appearing on behalf of the petitioner to address final arguments before the learned Trial Court therefore, he could not



appear. Moreover, the learned Trial Court was granting very short adjournments therefore, it was very difficult for the petitioners to make his counsel appear on his behalf to address final arguments. It is further submitted that on the third date of hearing i.e. on 19.02.2024 due to farmer's protest his counsel Mr. Sanjay Kumar who is a resident of Rohtak, Haryana could not appear before the learned Trial Court physically however, he intended to address arguments through *video-conferencing* which he could not do, due to sudden technical problems therefore, in these circumstances, the learned Trial Court erroneously closed the right of the petitioner herein to address final arguments which has caused grave irreparable loss to the defence to be raised on behalf of the petitioners herein. It is submitted that in these circumstances, the petitioners should not be deprived of their right of addressing the final arguments before the learned Trial Court.

8. Learned counsel submits that, if granted an opportunity, the final arguments shall be addressed within this week itself.

9. The submissions have been strongly opposed on behalf of the respondent submitting that, within a span of three months this is the third CM(M) petition which has been preferred by the petitioners herein. The suit was instituted in the year 2018 and the petitioners have already been granted liberty by this Court twice before to avail an effective hearing during the proceedings of the trial but the petitioners have been circumventing orders passed by this Court. On the earlier occasion when their right to lead evidence was closed and the order was challenged before this Court with a consent order, an opportunity was awarded to the petitioners by this Court and permission was granted to lead evidence on 21.12.2023 on one occasion however, the petitioner subsequently moved an application before the



learned Trial Court to place additional documents on record with the sole motive to delay the proceedings of the trial. When the same was disallowed by the learned Trial Court, second CM(M) petition was moved which is still pending for disposal before this Court. It is also submitted that this Court had granted an opportunity to petitioners to address final arguments before the learned Trial Court with directions to the learned Trial Court not to pass the orders however, the petitioner herein again sought adjournments on three hearings although on the first date of hearing i.e. on 03.02.2024 it has not been submitted that there was a bereavement in the family of the learned counsel for the petitioner. Moreso, on the 19.02.2024, learned counsel for petitioners never made any attempt to address the arguments with respect to connectivity problem due to which he was unable to address the final arguments. The learned counsel for respondent submits that in the above circumstances, the petitioners do not deserve any leniency however, they may be granted an opportunity for today to address the final arguments in case if he wishes to do so.

10. Having considered the above submissions and having perused the orders of the learned Trial Court brought to the notice of this Court, it is apparent that the petitioners have not shown promptness and diligence in conducting their case, however keeping in view that the petitioners may be granted an opportunity to be heard and that the principles of natural justice are not breached, the petitioners are afforded only one opportunity to address final arguments before the learned Trial Court within a period of seven days from today. The date to be fixed as per convenience to the learned Trial Court.



11. With above directions, the present petition, along with pending applications, stands disposed of.

SHALINDER KAUR, J.

MARCH 04, 2024/SDS