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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 10th September, 2024*

+ CM(M) 351/2019

SCINDIA INVESTMENTS PVT LTD

.....Petitioner

Through: Mr. N.K. Mody, Sr. Advocate with
Ms. Meghna Mishra, Mr. Rohit
Tripathy, Mr. Tarun Sharma,
Ms. Rashi Bajpayee and
Ms. Yashodhara Gupta, Advocates.

versus

SCINDIA POTTERIES AND SERVICES PVT LTDRespondent

Through: Mr. Sidharath Yadav, Sr. Advocate
with Ms. Divya Verma, Ms. Manini
Shah and Mr. Apoorv Agarwal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner has filed a civil suit seeking declaration and permanent injunction way back in the year 1990.
2. The above said suit was filed on the original side of this Court. However, with the change in the pecuniary jurisdiction, the suit, eventually, got transferred to the District Courts.
3. The petitioner was required to lead evidence on 08.11.2017 but the proxy counsel for the plaintiff sought adjournment on the ground that the witness was not present on account of ill health.
4. The learned Trial Court, however, keeping in mind that no documentary corroboration to that effect had been filed and keeping in



view the fact that it was an old case and various opportunities had already been availed by the plaintiff in the past, the opportunity of the plaintiff to lead further evidence was closed and resultantly, the matter was fixed for defendant's evidence.

5. Said order is under challenge.

6. The present petition is pending for quite some time and it is noticed that when this matter was taken up by the learned Single Judge on 28.02.2019, the operation of the above said order dated 08.11.2017 was also directed to be stayed.

7. In view of the above, everything is standstill and, resultantly, there is no further progress in the aforesaid civil suit in the interregnum.

8. When present petition was pending before this Court, both the sides had though expressed their inclination to settle the matter but, somehow, they could not arrive at any mutually agreeable formula and, therefore, the arguments have been heard today.

9. As already noticed, the above said impugned order was passed in year 2017 and, therefore, there is, virtually, a gap of seven years and keeping in mind the above substantial hiatus and the overall facts of the case, this Court feels that it will be, therefore, appropriate to give one last and final opportunity to the plaintiff to conclude its evidence.

10. When asked, Sh. Modi, learned Senior Counsel for the



petitioner states that the plaintiff would be examining only two witnesses viz. PW-1 Mr. K. Bhaskaran and Ms. Feroza Major. It is also claimed that the affidavits of both the witnesses are already on record and they would ensure that as per the directions to be given in this regard by the learned Trial Court, they appear before the learned Trial Court for the purposes of recording their statements/deposition.

11. Learned Senior Counsel for the respondent submits that as far as PW-1 Mr. K. Bhaskaran is concerned, he was earlier examined and discharged way back on 10.08.2010 and, therefore, without there being any specific permission given by the learned Trial Court, he cannot be permitted to re-enter into witness box.

12. To confront the above submission, learned Senior Counsel for the petitioner submits that when the learned Trial Court had taken up one application moved by the plaintiff seeking permission to lead secondary evidence, such application was allowed by the learned Trial Court on 07.07.2017 and it is only in above said context that Sh. K. Bhaskaran would be re-entering into witness box and not for any other purpose.

13. This Court is very much conscious of the scope and ambit of not only Article 227 of the Constitution of India but also the order which is under challenge herein.

14. The case was fixed for plaintiff's evidence on 08.11.2017 and since the adjournment had been sought on the ground that the witness was not present on account of some medical exigency, the learned



Trial Court declined to adjourn the matter and closed the right of the plaintiff to lead further evidence. The learned Trial Court also noticed in its order that an application for leading secondary evidence had already been allowed and, thereafter, last and final opportunity was granted to the plaintiff but no witness had been produced despite above.

15. It is reiterated by learned counsel for the petitioner that the plaintiff would not examine any other witness except the above said two witnesses.

16. It will be, however, appropriate to leave it to the learned Trial Court to consider as to which witness needs to be examined in view of the order passed by the learned Trial Court on 07.07.2017, as according to learned counsel for the plaintiff, they would be examining PW-1 Sh. K. Bhaskaran for the aforesaid limited purpose of leading secondary evidence.

17. As far as Ms. Feroza Major is concerned, this Court hereby permits the plaintiff to examine her. Her affidavit is reportedly before the learned Trial Court, already.

18. The petition is disposed of with the following directions:-

- (i) The plaintiff is granted one last and final opportunity to examine its said two witnesses;
- (ii) However, as far as PW-1 Sh. K. Bhaskaran is concerned, the learned Trial Court would be at liberty to consider whether said Sh. K. Bhaskaran can be examined, as he was earlier



examined and discharged and would also see whether he or anyone else can be permitted to lead secondary evidence in terms of the order passed on 07.07.2017.

(iii) Defendant would be at liberty to raise objection qua the competence of proposed witness to lead secondary evidence and the learned Trial Court would consider any such objection and dispose of the same in accordance with law.

(iv) Once the PE is over, learned Trial Court shall fix up the matter for DE and would make best endeavour to dispose of the matter as expeditiously as possible.

19. The next date before the learned Trial Court is stated to be 02.12.2024.

20. Keeping in mind the age of the case, it will be appropriate if the date is pre-poned.

21. Both the parties would appear before the learned Trial Court on 07.10.2024 at 2:00 pm. The learned Trial Court after ascertaining the availability of the witnesses and its own board position, would give suitable dates for the purposes of examination of the witnesses of the plaintiff in aforesaid terms.

22. Petition is disposed of in the aforesaid terms.

23. No order as to cost.

(MANOJ JAIN)
JUDGE

SEPTEMBER 10, 2024/st