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

+ **CM(M) 2330/2024**

JITENDER SINGH LAMBA

..... Petitioner

Through: Ms. Aakanksha Kaul, Mr. Aman Sahani, Mr. Satya Sabharwal, Mr. Akash Saxena & Ms. Rhea Borkotokay, Advs.

versus

UNION BANK OF INDIA AND ANR

..... Respondents

Through: Mr. Sanjeev Sagar, Standing Counsel with Ms. Nazia Parveen, Adv. for Union Bank of India.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

10.04.2024

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CM APPL. 21553/2024—Exp.

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

CM(M) 2330/2024 and CM APPL. 21554/2024—stay

3. The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 21.02.2024, 13.03.2023 and 15.05.2023 passed by the learned District Judge (Commercial Court-05), Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court') in CS(COMM) 421/2021 titled as "*Union Bank of India vs. Jitender Singh Lamba & Ors.*" whereby the right of the petitioner to cross



examine the witness of respondent no.1 as well as to lead its own evidence has been closed. The petitioner herein is the defendant no.1 before the learned Trial Court.

4. Ms. Aakanksha Kaul, learned counsel for the petitioner submits that on 19.12.2019, respondent no.1 had filed a suit against the petitioner for recovery of Rs.10,89,252.16/-. On receiving the summons of the suit, the petitioner had put an appearance and contested the same, the written statement was filed. On the pleadings of the parties, vide order dated 13.12.2021, the learned Trial Court framed issues and the matter was listed for recording the evidence of respondent no.1 on 25.01.2022. On the subsequent 4 to 5 dates of hearing, the petitioner could not cross examine the witness of respondent no.1; therefore, his right of cross-examination was closed vide order dated 13.03.2023. Moreover, on some dates of hearing, respondent no.1 also requested adjournment as their own witness was not available. Thus, it is submitted that non cross-examination of the witness of respondent no.1 cannot be solely attributed to the petitioner.

5. The learned counsel further submits that only two effective opportunities were granted to the petitioner to lead and conclude defence evidence. The first opportunity was granted on 10.04.2023, however due to unavailability of the counsel, an adjournment was requested and the matter was renotified for 15.05.2023. On the said date of hearing, the petitioner informed the learned Trial Court that his counsel did not wish to defend him and requested an adjournment to engage a legal aid counsel. However, the learned Trial Court closed the right of the petitioner to lead defence evidence and posted the matter for final arguments. Thereafter, the petitioner moved an application under Section 151 CPC for recalling of orders dated



13.03.2023 and 15.05.2023 which was dismissed by the learned Trial Court vide order dated 21.02.2024.

6. The learned counsel for the petitioner submits that the witness of respondent no.1 could not be cross examined and the petitioner could not lead his defence evidence due to the unavailability of initially engaged counsel. As the previous counsel was not appearing on behalf of the petitioner, therefore, the petitioner approached the Legal Aid Cell. Consequently, an advocate was appointed by the Delhi District Court Legal Aid Services. Upon inspecting the records, the said counsel discovered that the aforesaid orders have been passed. Subsequently, the aggrieved petitioner has filed the present petition before this Court. In the present petition, the petitioner prays for setting aside the impugned orders dated 13.03.2023, 15.05.2023 and 21.02.2024 and the petitioner be granted an opportunity to cross examine the witness of respondent no.1 as well as to lead its own evidence.

7. Controverting, the submissions made on behalf of the petitioner, Mr. Sanjeev Sagar, the learned counsel for respondent no.1 submits that the learned Trial Court granted the petitioner as many as six opportunities to cross-examine the witness of respondent no.1 and to lead its own evidence. However, the petitioner did not avail any of these opportunities, not even on a single date. So much so, an opportunity was granted to the petitioner subject to a cost of Rs.2,000/- which has also not been paid by the petitioner.

8. Further, the learned counsel submits that the final arguments have been heard yesterday by the learned Trial Court, therefore, the present petition has been preferred at a belated stage which shall prejudice the rights of respondent no.1. Therefore, in these circumstances, the impugned orders



passed by the learned Trial Court do not require any interference by this Court.

9. Apart from hearing the arguments, the record as well as impugned orders have been perused.

10. Pertinently, the learned Trial Court framed issues on the pleadings of the parties vide order dated 13.12.2021 and the matter was renotified for recording the evidence of respondent no.1. Subsequently, an application was moved on behalf of respondent no.1 for change of authorised representative which was allowed by the learned Trial Court vide order dated 24.03.2022 and the matter was then listed again for recording the evidence on 06.05.2022. On the said date of hearing, the affidavit of evidence was not filed because the respondent's counsel had informed the learned Trial Court that the original documents could not be traced. Thereafter, the matter was listed on 08.06.2022 as the last opportunity granted to the respondent to lead evidence.

11. On the said date of hearing, again, neither any witness was present on behalf of the respondent nor any evidence affidavit was filed on the ground that the original documents are still not traceable. However, the learned Trial Court granted another opportunity to respondent no.1 for leading evidence subject to a cost of Rs.10,000/- to be paid to the petitioner and the matter was postponed for 27.07.2022. On the aforesaid date of hearing, an application was moved on behalf of the respondent no.1 seeking change of the authorised representative which was allowed by the learned Trial Court. Additionally, another application was filed by respondent no.1 seeking a waiver of costs of Rs. 10,000/-. However, the learned Trial Court was of the view that a request for complete waiver of the costs cannot be entertained



but the Court reduced the cost to Rs. 5,000/-.

12. Furthermore, on the said date of hearing, the evidence affidavit of the authorised representative of respondent no.1 was tendered and the cross-examination was deferred on the ground that the copy of the evidence affidavit was supplied on the same day itself and the learned counsel for the petitioner requires time to go through the same. In the meanwhile, parties had also shown inclination for settlement of the disputes, thus, the learned Trial Court granted an opportunity to the parties to reach for a compromise. In the event that there was no compromise arrived at between the parties, then the matter was to be listed for cross examination of PW-1 on 02.09.2022.

13. The learned counsel for the petitioner submits that on the aforesaid date of hearing, again, the witness on behalf of the respondent was not present and the previously imposed cost was also not paid. Further, the parties once again requested for settlement of the disputes which was allowed and the matter was adjourned for 30.09.2022. Additionally, the Branch Manager was directed to appear in person on the next dates of hearing i.e., 06.10.2022 and 14.10.2022.

14. It is further submitted by the learned counsel that the parties were making attempt to settle their disputes, therefore, the matter was not listed for recording of respondent's evidence. However, as the matter could not be settled, the case was taken up on 23.11.2022 for the cross examination of PW-1. On the said date of hearing, the petitioner requested an adjournment as his counsel was not available. Consequently, a final opportunity was granted to the petitioner to conclude the cross-examination subject to cost of Rs.2,000/- and the matter came to be listed on 16.01.2023. On the next date



of hearing, the learned Presiding Officer was on leave and the matter was listed on 13.03.2023.

15. The learned counsel for the petitioner submits that on 13.03.2023, the learned Trial Court closed the right of the petitioner to cross-examine the witness of respondent no.1 i.e. PW-1 and the matter was listed for defence evidence on 10.04.2023. On the mentioned date of hearing, an adjournment was requested on behalf of the petitioner as his counsel was occupied somewhere else. The said request was allowed by the learned Trial Court and the matter was listed for defence evidence on 15.05.2023 as a last opportunity. On the said date of hearing, the petitioner informed the learned Trial Court that his counsel did not wish to defend him and requested an adjournment to engage a legal aid counsel. However, the learned Trial Court closed the right of the petitioner to lead defence evidence. Subsequently, the petitioner had moved an application under Section 151 CPC for recalling of orders dated 13.03.2023 and 15.05.2023 vide which the right to cross examine the witness of the respondent no.1 as well as the right to lead its own evidence was closed.

16. Evidently, from the orders of the learned Trial Court, it is apparent that respondent no.1 has taken more adjournments in leading its own evidence and only two adjournments have been requested on behalf of the petitioner due to the unavailability of his counsel and as a result, the witness of respondent no.1 could not be cross examined. In view of the same, the impugned order dated 13.03.2023 is set aside and the petitioner is granted a single opportunity to cross examine PW-1.

17. Learned counsel for the respondent submits that matter is listed before the learned Trial Court on 20.04.2024. On this date, it may not be possible to



summon the witness. Accordingly, the learned Trial Court to give a date for cross examination as per its own convenience.

18. It is evident from orders of the learned Trial Court that only two opportunities were afforded to the petitioner to lead its defence evidence and examine its witnesses. The learned counsel for the petitioner submits that only one or two witnesses are to be examined. Therefore, in view of the above submissions, the impugned order dated 15.05.2023 is also set aside and the petitioner is granted one opportunity to lead its own evidence in defence subject to a cost of Rs.10,000/- after the PW-1 is cross examined. The learned Trial Court to ensure that longer adjournment is not granted to complete cross examination of PW1 for concluding DE as the case is at final stage.

19. The impugned orders dated 21.02.2024, 13.03.2023 and 15.05.2023 are set aside.

20. With the above directions, consequently, the present petition stands disposed of.

SHALINDER KAUR, J

APRIL 10, 2024/ab