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

+ CM(M) 958/2022, CM APPL. 40333/2022—stay

MOHD MERJA

..... Petitioner

Through: Mr. Nazim U. Ahmed, Adv.

versus

MTA INFRASTRUCTURE PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

03.04.2024

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1. The petitioner, who is the plaintiff before the learned Trial Court impugns the order dated 20.08.2022 whereby his right to lead ex-parte evidence was closed.
2. Learned counsel for the petitioner submits that he had filed a suit for recovery against the defendant on 15.12.2020, however, the defendant did not appear to contest the suit and was proceeded ex-parte vide order dated 29.11.2021 and the petitioner was called upon to lead ex-parte evidence, which was fixed for 22.01.2022. On the said date of hearing, petitioner had put ex-parte evidence in the petition box in the Court as during the Corona period, evidence affidavit could not be filed in the Court and the matter was listed for 02.04.2022.
3. On 02.04.2022, the matter was taken up for deposition of the plaintiff and the evidence of the plaintiff was recorded and the matter was listed for



06.06.2022 for leading the remaining evidence of the plaintiff, however, the witnesses were to be summoned. As the plaintiff was not in Delhi, the application could not be signed, which was moved on 20.08.2022 on which date of hearing, the learned Trial Court allowed the adjournment subject to cost of Rs. 5,000/-, out of which Rs. 3,000/- to be deposited with DLSA and Rs. 2,000/- to be deposited at Lawyer's Welfare Fund. On 20.08.2022, application for summoning of witness was filed along with some document, however, learned Trial Court did not take the same on record and closed the ex-parte evidence of the petitioner.

4. Learned counsel further submits that the learned Trial Court has erred in passing the order dated 20.08.2022 as the petitioner could not produce his remaining witnesses on single date of hearing i.e. 20.08.2022, which was not deliberate act and the application could not be filed as the petitioner was not in town. Learned counsel submits that the petitioner had wanted expeditious disposal of his case as being the plaintiff, it is in his interest for early disposal of his case.

5. Learned counsel submits that the learned Trial Court did not take into account all the said facts and has erroneously closed his right to lead ex-parte evidence. Learned counsel further submits that he is to examine only one witness from Yes Bank, New Friends Colony Branch, Delhi, which is a material witness. He further submits that the petitioner has been pursuing his case diligently, thus, an opportunity may be granted to examine one more witness so as to conclude his evidence.

6. Keeping in view the above submissions and after perusing the record, petitioner is granted single opportunity to examine the above mentioned bank witness, which shall be summoned by the petitioner after moving an



appropriate application before the learned Trial Court within a week. The date of remaining evidence be given by the learned Trial Court as per its convenience, subject to cost of Rs. 5,000/- already imposed by learned Trial Court and to be deposited as per order dated 20.08.2022 of learned Trial Court, within one week.

7. Petition stands disposed of accordingly.

SHALINDER KAUR, J.

APRIL 03, 2024/ss