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

+ CM(M) 1460/2019

STAR EDUCATIONAL BOOK DISTRIBUTOR PVT LTD

..... Petitioner

Through: Mr. Rajan Chaudhary, Adv.

versus

MANAGING DIRECTOR GALAXY TOYOTA & ANR

..... Respondents

Through: Mr. Vipin Singhanian, Adv for R-1.

Ms. Pavirta Singh, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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06.03.2024

CM APPL. 44501/2019—Exp.

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

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3. The present petition has been filed under Article 227 of the Constitution of India read with Section 151 of the Code Of Civil Procedure, 1908 (hereinafter referred to as 'CPC') impugning the order dated 24.11.2015 and 21.08.2018 passed in Civil Suit No. 454/2016. Whereby, the right of the petitioner herein to lead the plaintiff's evidence was closed and the review application thereto was also dismissed.
4. It is submitted by the petitioner that he had filed a suit for recovery titled as '*Star Educational Book Distributor Pvt. Ltd. v. Managing Director, Galaxy Toyota and Ors.*' against the respondent herein on 31.07.2014. Vide order dated 13.01.2015, the learned Trial Court framed



issues and the parties were directed to file list of witnesses within 15 days and the petitioner was directed to file evidence affidavit with advance copy to the opposite side and to place the same on record one week before the next date of hearing before the learned Trial Court which was 06.04.2015.

5. It is submitted that the petitioner could not file the evidence affidavit on 06.04.2015 and on the subsequent date as well that was 30.09.2015.

6. On 30.09.2015, adjournment was sought by the petitioner and the same was allowed with cost of Rs. 2,000/- and the matter was adjourned for 24.11.2015. It is submitted that the right of the petitioner to lead plaintiff evidence was closed by the learned Trial Court vide order dated 24.11.2015.

7. On 04.04.2016, an application under Section 114 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) was filed seeking review of order dated 24.11.2015. Vide order dated 16.05.2018, application under Order XII Rule 6 of CPC was dismissed, however, an opportunity was granted by the learned Trial Court to lead plaintiff evidence and matter was further adjourned for 21.08.2018, although the petitioner had committed only one default in not filing the evidence affidavit and producing the witnesses to be recorded before the learned Trial Court. It is submitted that as only one opportunity was wasted, the present petition may be allowed subject to cost and the petitioner may be granted one opportunity to conclude the evidence.

8. The respondents are controverting the submissions made hereinabove. The learned counsel for the respondent submits that the present petition is not maintainable as the learned Trial Court had afforded three adjournments to the petitioner but the petitioner neither filed the evidence affidavit on record nor any witness was produced, moreso, cost was also imposed twice



which was also not tendered. Therefore, in these circumstances, the right of the petitioner to lead the plaintiff evidence was closed. It is submitted that thereafter the petitioner had moved an application under Order XII Rule 6 of the CPC which was also dismissed and the review application filed was further dismissed by the learned Trial Court. It is submitted that in view of the above conduct of the petitioner specifically with respect to the Order XVII of the CPC, the present petition be dismissed. The Order XVII of the CPC reads as under:

“1. Court may grant time and adjourn hearing.—1 [(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.]”

9. Apart from hearing the arguments, the orders placed of the learned Trial Court and the impugned orders are perused.

10. The learned Trial Court had framed the issues on 13.01.2015 and afforded an opportunity to the parties to file their list of witnesses within 15 days. It further directed the petitioner herein to file evidence affidavit and the evidence of the petitioner was to be recorded on the next date of hearing i.e. on 06.04.2015. However, on the said date of hearing, the respondent no.1 moved an application seeking amendment of the issues which was allowed on the same date. Needless to say, on the date of the hearing, the learned Trial Court has also observed that evidence affidavit was not filed on behalf of the petitioner.

11. The fact cannot be ignored that application seeking amendment of issues filed under Order XIV Rule 5 of the CPC was preferred by the



respondent no.1 herein on 23.03.2015 i.e. before the date being 06.04.2015 when the evidence was to be recorded. Accordingly, on 06.04.2015, since the application for amendment of issues was to be taken for hearing, the evidence could not have been recorded.

12. On 06.04.2015, the learned Trial Court allowed the shifting of onus to prove the issue no.2. The onus was changed and the application under Order XIV Rule 5 of the CPC filed on behalf of the respondent no. 1 was disposed of and the learned Trial Court further posted the matter for recording of PE on 30.09.2015. On the said date of hearing as neither the affidavit of evidence nor the list of witnesses was filed on behalf of the petitioner herein, one last opportunity was granted to the petitioner subject to cost of Rs. 2,000/- to be paid to the respondents failing which the plaintiff evidence was ordered to be closed. Further, on 24.11.2015, as again the petitioner neither filed the evidence affidavit or list of witnesses nor the cost was tendered, the opportunity of the petitioner to lead plaintiff evidence was closed. Subsequent thereto, the review application with respect to the orders dated 24.11.2015 was also dismissed.

13. Needless to say that the petitioner being the plaintiff before the learned Trial Court was required to be vigilant and diligent while pursuing the trial of his case which he has failed to do. However, in the interest of justice, the petitioner is afforded one opportunity to lead his entire evidence on the next date of hearing fixed before the learned Trial Court which is stated to be somewhere in May, 2024. No other opportunity then the date already fixed by the learned Trial Court shall be granted to the petitioner, however, the same is subject to the cost of Rs. 15,000/- and the petitioner shall further pay the cost of Rs. 7,000/- in addition as already imposed by



learned Trial Court to both the respondents.

14. At this stage, the learned counsel for the respondents submits that the advance copy of the evidence affidavit is still not furnished. Same be furnished and placed on record of the learned Trial Court within one week from today.

15. With above observations, the petition stands disposed of.

SHALINDER KAUR, J

MARCH 6, 2024

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