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

% ***Date of decision: 22nd July, 2024***

+ **CM(M) 2971/2024 & CM APPL. 40735-40736/2024**

S.B. ENTERPRISES, DELHI

.....Petitioner

Through: **Mr. Kartik Mukhija with Mr. Shankar
and Mr. Sarthak Chaudhary,
Advocates.**

versus

SHREE GANESH STEEL TRADERS

.....Respondent

Through: **Mr. Sandeep Kumar, Advocate.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant before the learned Trial Court and has challenged orders dated 26.03.2024 and 01.06.2024.
2. Since the petitioner (defendant before the learned Trial Court) could not produce any witness and also could not file affidavit of its proposed witnesses, its right to lead evidence was closed on 26.03.2024.
3. Petitioner moved an application seeking recall of said order but said application was also dismissed on 01.06.2024.
4. Learned counsel for the petitioner states that the defendant merely wanted to examine Sh. Ajay Kumar Bansal (proprietor of



defendant Company) but since the grandmother of the counsel for defendant had expired 3-4 days back, the affidavit could not be prepared and submitted before the learned Trial Court.

5. It is contended that no party should be penalized in such a situation.

6. Learned counsel for the respondent (plaintiff before the learned Trial Court) appears on advance notice and accepts notice. He states that without prejudice to his rights and contentions, he would have no objection if one last and final opportunity in this regard is granted to the petitioner.

7. Learned counsel for the petitioner states that the affidavit of Sh. Ajay Kumar Bansal is already before the learned Trial Court. Learned counsel for the petitioner states that there was never any intention to delay and that he would abide by any term and condition to be imposed by the Court in this regard.

8. Let the copy of such affidavit be supplied, if not already, to the learned counsel for respondent herein during the course of the day through electronic mode.

9. The next date before the learned Trial Court is reportedly 17.08.2024.

10. Keeping in mind the overall facts and circumstances of the case and, the gracious concession given by the learned counsel for the respondent, present petition is disposed of with direction that the



learned Trial Court would grant one effective opportunity to respondent to examine said witness i.e. Ajay Kumar Bansal.

11. The learned Trial Court would be at liberty to record the evidence either on the next fixed date of hearing i.e., 17.08.2024 or on some other date, as per the convenience of its Board.

12. It is made clear that the petitioner herein would be entitled to only one effective opportunity.

13. Petitioner is also burdened with cost of Rs.10,000/- to be paid to the opposite counsel/side on the next date of hearing before the learned Trial Court.

14. Petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

JULY 22, 2024
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