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

+ CM(M) 1829/2023, C.M. APPL. 57695/2023, 5887/2024

LIVGUARD ENERGY TECHNOLOGIES PVT LTD Petitioner

Through: Mr.Amulya Dhingra and
Mr.Abhishke Dev, Advs.

Versus

MS KRITIKA SONI Respondent

Through: Mr.Marroof Ahmad, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **01.02.2024**

1. The present petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 [in short 'CPC'] has been filed by the petitioner impugning the order dated 29.08.2023 passed by learned District Judge (Comm.-02) West, Tis Hazari Court, Delhi [in short "Trial Court"] in CS (COMM) No. 450/2019 wherein the application filed on behalf of the petitioner herein seeking condonation of delay of about 15 months in filing the list of witnesses was dismissed. The petitioner herein is the defendant before the learned Trial Court.

2. Learned counsel appearing on behalf of the petitioner submits that vide order dated 01.12.2023, the learned Predecessor Bench had granted liberty to the petitioner to file the evidence affidavit of three witnesses without prejudice to the rights of the parties before the learned Trial Court within one week. However, there has been a delay of four days in complying



with the order dated 01.12.2023 as one of the witnesses was not available for which the petitioner herein had moved application in this petition.

3. It is further submitted that inadvertently, at the appropriate stage, the list of witnesses could not be filed, it was only when the case came to be listed for evidence of the defendant, then it came to his knowledge that he has failed to file the list of witnesses. Subsequent thereto, he filed the application for the learned Trial Court, which came to be rejected vide the impugned order. Learned counsel further submits that the petitioner herein has to examine only two witnesses instead of three which it had earlier submitted, therefore, the impugned order be set aside, which is detrimental to his defence.

4. The submissions have been strongly opposed on behalf of the respondent submitting that the petitioner is only interested in delaying the trial of the case by filing baseless applications. At the outset, the petitioner did not file the list of witnesses and could not even explain the delay of 15 months for not filing the same. Subsequently, when an opportunity was granted to the petitioner by the learned Predecessor Bench, he did not even file the affidavits of witnesses within the given time frame. It is submitted that in these circumstances the impugned order may not be upset as there is no illegality in the impugned order.

5. A very short question has arisen in this petition, whether the petitioner be permitted to file list of witnesses after delay of 15 months and thereby permitted to lead further evidence in defence.

6. The learned Trial Court has correctly held that the petitioner has filed the list of witnesses after a long slumber. However, keeping in view the interest of justice as defence of petitioner shall be imperiled, the impugned



order dated 29.08.2023 is set aside, subject to cost of Rs. 15,000/- to be paid to the respondent within a week from today. The evidence affidavit be taken on record by the learned Trial Court alongwith list of witnesses.

7. Learned Trial Court is directed to ensure that the petitioner does not take any undue adjournment, for concluding the evidence.

8. With the aforesaid directions, the petition stands disposed with along with pending applications.

SHALINDER KAUR, J.

FEBRUARY 01, 2024
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