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

+ CM(M) 1910/2023, CM APPL. 59729/2023

AMAR LAL ARORA

..... Petitioner

Through: Mr. R. R. Jangu, Adv.

versus

SHASHI BALA

..... Respondent

Through: Mr. K. P. Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

26.04.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 04.07.2023 passed by the learned Additional District Judge-04, North-West District, Rohini Courts, Delhi (hereinafter as “Trial Court”) in CS DJ No. 320/2017 titled “*Shashi Bala v. Amar Lal Arora*” whereby the learned Trial Court closed the right of the petitioner herein i.e., defendant to lead evidence.

2. Learned counsel submits that the factual framework of the case unfolds with the respondent herein filing a suit for compensation/damages on account of defamation on 06.04.2017. Thereafter, the petitioner filed the written statement in response to the suit in February, 2018. Subsequently, the respondent led the plaintiff evidence till 16.03.2023. the matter was fixed for defence evidence on 04.07.2023

3. Learned counsel for the petitioner submits that on 04.07.2023, the



petitioner along with the proxy counsel had appeared before the learned trial court and requested for a Passover. However, the learned Trial Court instead of granting a Passover, closed the evidence of the petitioner under Order XVII of the Code of Civil Procedure, 1908 (“CPC”) on the very first date of leading defence evidence without even affording opportunity to produce his witnesses. Further, the petitioner was not seeking an adjournment but was only requesting a Passover, ironically, the learned Trial Court closed the defendant’s evidence in haste.

4. Learned counsel for the petitioner also submits that the impugned order is arbitrary and harsh, which has caused grave prejudice to the rights of the petitioner and violates the principles of natural justice. The learned Trial Court has failed to justify in its order, the reasons for closing the defence evidence.

5. Learned counsel for the petitioner submits that if the defence evidence will not be permitted, the learned Trial Court will ultimately pass the judgment against the petitioner and hence, the learned Trial Court ought to be directed for permitting petitioner to lead defence evidence for proper adjudication of the case.

6. Confuting the submissions of the petitioner, the learned counsel for the respondent submits that the petitioner herein is habitual in seeking adjournments on the ground that his counsel is not available and is out of station. He submits that the said conduct of the petitioner can evidently be seen even when the evidence of the respondent was being recorded. On various dates of hearing, adjournment was requested on behalf of the petitioner on the aforementioned sole ground and due to which the recording of the evidence of the petitioner was delayed. Learned counsel emphasized



by submitting that even before the learned Predecessor Bench of this Court on previous date of hearing, same plea was raised by the petitioner that his counsel had gone to Rajasthan and this Court had taken a serious view of the same and had noted the conduct of the petitioner. Learned counsel submits that keeping in view of such negligent and casual behavior of the petitioner, he cannot be permitted to further delay the proceedings before learned Trial Court by affording him an opportunity to lead evidence. Learned counsel also submits that the right to lead evidence of the petitioner was closed on the very same day for the reason that the petitioner was not ready to appear in the witness box for his evidence on that day despite directions by the learned Trial Court.

7. Learned counsel for the respondent submits that as per provision under Rule 1 of Order XVII CPC the defendant can only take three adjournments, which the defendant had already taken. Moreover, the cost imposed for seeking adjournment is not paid till date despite rejection of his application for waiving of the cost. This categorically goes to reflect the conduct of the petitioner which is inclined towards delaying the speedy disposal of the case.

8. Learned counsel for the respondent submits that so far the matter relates to other witnesses, the petitioner did place list of witnesses before the learned Trial Court however, the same was returned to be filed along with an appropriate application. The parties were directed to file list of witnesses within 15 days from the framing of issues as per Order XVI Rule 1 CPC. Issues were framed vide order dated 28.07.2018. Further, the petitioner never complied with the specific orders to file the list of witnesses within a time bound manner and hence, this was the basis on which the list of



witnesses was returned.

9. Learned counsel for the respondent submits that the case is at the last stage of trial for hearing the final arguments and no purpose would be served to relegate it to the stage of evidence as the delay caused will prejudice the valuable rights of the respondent.

10. Learned counsel for the petitioner took this Court through various orders passed by learned Trial Court and emphasized that it is the respondent, who took a number of adjournments in concluding its evidence. The issues were framed on 28.07.2018 and the matter was listed for recording of the evidence of the respondent, which finally got concluded on 16.03.2023. For the first time, the case was listed for the evidence of the petitioner on 04.07.2023 and on the same date without granting any time to the petitioner to effectively lead his evidence, his right was closed. Learned counsel for the petitioner submits that although the petitioner as one of the witness was present, however, the counsel was not available at the time learned Trial Court took the matter, the only anxiety of the petitioner was to get his evidence recorded in presence of his counsel, who was to attend the Court post-lunch on that day. Various documents that were required to be exhibited during examination-in-chief would have been done by his counsel.

11. Submissions heard. Orders passed by learned Trial Court including the impugned order and the record perused.

12. Undoubtedly, the petitioner had not been diligent in conducting the proceedings before the learned Trial Court. It is also true that time and again, even during the recording of the evidence of the respondent, the petitioner had taken adjournments on account of non-availability of his counsel, however, it cannot be ignored that on 04.07.2023, it was the first



opportunity for the petitioner to lead his evidence and the request was made at around 12:00 noon seeking a Passover for post-lunch as the main counsel was on his way from Rajasthan and would get the witness examined in his presence.

13. To the contrary, learned counsel for the respondent had submitted before the learned Trial Court that he cannot wait for the appearance of the main counsel post-lunch as he had to attend to his other matters. Thus, the learned Trial Court gave an opportunity to the petitioner to stand in witness box for his evidence to which the petitioner was not willing to tender in the absence of his counsel, therefore, learned Trial Court proceeded under Order XVII CPC and closed the evidence of the defendant.

14. Considering the facts and circumstances behind the present controversy, the impugned order appears to be a little harsh. The learned trial court could have at least considered granting one opportunity to the petitioner to lead his evidence since his counsel was willing to appear in the post-lunch session. It cannot be denied that petitioner had requested for a passover and not for an adjournment and as passover was not convenient to the learned counsel for the respondent, a short adjournment could have been considered by the learned Trial Court may be subject to some conditions.

15. View of the above, a single opportunity is granted to the petitioner for leading his entire DE, subject to the cost of Rs. 15,000/- to be paid to the respondent on the next date of hearing before the learned trial court. In case any witness is required to be summoned on behalf of the petitioner, the learned Trial Court to fix the date for recording of DE, as per its convenience keeping in mind that case had already reached at final stage of disposal.



16. Consequently, the petition, along with pending application, if any, is allowed with above directions.

SHALINDER KAUR, J.

APRIL 26, 2024/ss