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

+ CM(M) 1987/2023, CM APPL. 62535/2023-stay, CM APPL. 62536/2023—lengthy list of dates

BHASIN INFOTECH

..... Petitioner

Through: Ms. Raveesha Gupta, Mr. Ravinder Singh & Mr. Anuvrat Singh, Advs.

versus

MEGHA JAIN

..... Respondent

Through: Mr. Shikhar Garg, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

22.05.2024

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1. Vide the present petition, the petitioner has invoked the power of superintendence of this Court under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) against the order dated 10.10.2023 passed by the learned Additional District Judge - 01, Patiala House Court (“Trial Court”) in the matter titled “*Megha Jain vs. Bhasin Infotech and Infrastructure Pvt Ltd.*” bearing CS No. 57812/2016 whereby the learned trial court dismissed the application seeking recall of the order dated 20.09.2022 vide which the right of the petitioner to cross-examine the plaintiff witness was closed.

2. Ms. Raveesha Gupta, learned counsel for the petitioner submits that the respondent filed a civil suit seeking recovery of Rs. 45,15,447/- against



the petitioner before the learned Trial Court. Thereafter, to contest the suit, the petitioner filed the written statement on 26.09.2016 which was taken on record subject to payment of cost of Rs. 3,000.

3. Learned counsel submits that previously on various dates of hearing, the respondent did not lead evidence nor filed its affidavit and even cost was imposed by the Learned Trial Court on the respondent. Further, even advance copy of evidence was not supplied to the petitioner thus the matter was adjourned. Thereafter, the petitioner due to anxiety attacks suffered by the counsel for the petitioner could not appear before the learned trial court and was thus proceeded ex-parte. Also, on two dates, the respondent sought time to engage new counsel and also the fresh Vakalatnama was filed by the newly engaged counsel, thus the matter was further delayed.

4. Learned counsel also submits that on 16.12.2021, the arguments on the application by the respondent under Order XI Rule 16 were heard however, the respondent did not press the application further, accordingly, the matter was listed for 07.04.2022 for plaintiff evidence. On 07.04.2022, the petitioner was granted a last opportunity to cross-examine the respondent witness on 20.09.2022. However, on the said date of hearing, the erstwhile counsel of the petitioner was already on his legs before this court and thus the matter was passed over as was requested. The Passover was called however, the erstwhile counsel remained occupied before this court. Thus, the learned Trial Court closed the right of the petitioner to cross-examine the plaintiff witness i.e. PW1. Further, submits that the engagement of the erstwhile counsel before this court is also evident from the diary of the counsel annexed with the present petition.

5. Learned counsel further submits that on the same date i.e. 20.09.2022,



the erstwhile counsel reached the court and immediately moved a handwritten application before the learned trial court seeking recall of the said order which was directed to be listed on the next date. On 13.12.2022, the erstwhile counsel also filed a typed application seeking recall of the order dated 20.09.2022 to supplement the averments made in the application filed earlier. However, on 17.12.2022, the learned Presiding Officer was on leave and case was listed for 14.03.2023. On said date, the erstwhile counsel of the petitioner was allowed to withdraw the handwritten application filed on 20.09.2022 and had granted time to the respondent to file reply to the application filed on 13.12.2022 seeking recall of order dated 20.09.2023. On the next date of hearing i.e. 01.07.2023, the reply to the application was supplied to the AR of the petitioner and the case was listed for 10.10.2023. Vide the impugned order, the learned Trial Court erroneously dismissed the application of the petitioner.

6. In support of his contentions, the learned counsel also relies on the judgement of this court in **Deepak vs Ramesh Sethi** CM(M) 306/2022.

7. Mr. Shikhar Garg, the learned counsel for the respondent controverting the submissions, contended that the issues in the suit were framed back in 2016. The petitioner was granted a final opportunity by the learned trial court to cross-examine the plaintiff witness. Their conduct is itself lackadaisical as they have sought Passovers on many occasions. Moreso, on 20.09.2022, when the right to cross-examine was closed, the proxy counsel for the petitioner requested for a Passover as the erstwhile main counsel was before this court, which was also granted by the learned Trial Court and yet the same couldn't be done.

8. Learned counsel further submits that the petitioner in proof of the



engagement before this court has only provided a copy of its diary page which is not a sufficient proof, petitioner should have instead filed the order passed on that day reflecting his appearance before this court. Furthermore, no cause list of this court was filed by the petitioner to establish their stand further. Hence, these are all delay tactics adopted by the petitioner to prolong the trial and the learned trial court has rightly closed the right to cross-examine and as well as the application seeking recall of the same.

9. Submissions heard and record as well as the impugned order perused.

10. Needless to say, the recording of the evidence in the present case has been prolonged for which varied reasons had been there justifying the same, however, it cannot be said that it was solely the fault of the petitioner. Various orders of the learned trial court elucidate that the adjournments for recording of the plaintiff's evidence were also taken by the respondent, on some occasion, the learned presiding officer of the court was on leave and the delay for some time period can also be attributed to the fact that the country was reeling under the Covid-19 Pandemic.

11. Furthermore, the petitioner has also contributed in the delay by not conducting the cross-examination of the plaintiff witness as per the directions of the learned trial court.

12. Notably, cross-examination of a witness is conducted to throw light on the credibility of testimony of a witness and is an important tool to unravel the truth from the evidence of the witness. This is also in consonance with the principle of a fair trial. In this backdrop, such an important right cannot be denied to a litigant in a nonchalant manner.. Further, the coordinate bench of this court in **Deepak vs Ramesh Sethi** (*supra*) has held as under:



“13. The right to lead evidence is pivotal to a fair trial and partakes of the character of natural justice and fair play. No doubt, where a party is unconscionably indolent, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties to an adequate opportunity to place their respective stands on record, the Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like.”

13. In the facts and circumstances as noted hereinabove and having considered the submissions of the parties, in the interest of justice, a single opportunity is granted to the petitioner to cross-examine PW1 either on the date already fixed before the learned Trial Court or on a date to be fixed by the learned trial court as per its convenience of the board, subject to a cost of 20,000 to be paid by the petitioner to the respondent on the next date of hearing before the learned trial court.

14. Accordingly, the impugned order is set aside. The petition is allowed and the pending applications, if any, stand disposed of.

SHALINDER KAUR, J.

MAY 22, 2024

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