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

+ **CM(M) 2022/2023**

M/S EXKLUSIVE PAPERS PVT. LTD. Petitioner

Through: **Mr. Vijay Datt Gahotri, Adv.**

versus

M/S SHREE VAISHNO ENTERPRISES AND ORS Respondents

Through: **Mr. Sanjay Kumar and Mr. Neeraj
Kadyan, Advs.**

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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26.04.2024

CM APPL. 63557/2023—Exp.

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

**CM(M) 2022/2023, CM APPL. 63558/2023—Addl.doc., CM APPL.
63559/2023--stay**

3. The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 06.11.2023 passed by the learned District Judge (Commercial Court), North, Rohini, Delhi (hereinafter referred to as “Trial Court”) in CS(COMM) No. 433/2019 titled “*M/S Exklusive Papers Pvt. Ltd. vs. M/s Shri Vishno Enterprises and Ors.*” whereby the petitioner’s right to lead evidence was closed.
4. The factual matrix of the present case is that on 22.11.2019, the petitioner instituted a commercial suit seeking recovery of damages



amounting to Rs. 10,19,500/- and to obtain a decree for mandatory injunction against the respondents.

5. On 27.10.2020, the respondents filed their written statement. Thereafter, the petitioner moved an application under Order VIII Rule 10 CPC which was dismissed by the learned Trial Court on 07.07.2022. Following this, the petitioner preferred a CM(M) petition bearing no.1339/2022 before this Court challenging the aforesaid order. Vide order dated 01.12.2022, this Court issued notice to the respondent and stayed the proceedings before the learned Trial Court.

6. Subsequently, the learned Trial Court closed the petitioner's right to lead evidence on 22.12.2022 and listed the matter for recording the evidence of the respondent on 16.02.2023. However, on the said date of hearing, the learned Trial Court adjourned the matter to 27.07.2023, in view of the stay granted by this Court. On 27.07.2023, the matter was renotified for the recording of defence evidence as well as for final arguments to 07.10.2023.

7. Meanwhile, the petitioner moved an application in CM(M) 1339/2022 under Section 151 CPC for early hearing of the petition before this Court. By an order dated 06.10.2023, this Court granted an opportunity to the petitioner to lead evidence, subject to filing of the evidence by way of an affidavit along with the list of witnesses within 15 days. On 07.10.2023, the learned Presiding Officer was on leave and the matter was adjourned to 06.11.2023.

8. On the said date of hearing, the learned counsel for the petitioner requested an adjournment on the ground that the petitioner is unwell and asked permission to file the relevant medical documents. Vide impugned order dated 06.11.2023, the learned trial court refused to grant any



adjournment to the petitioner citing the directions issued by this Court in the order dated 06.10.2023 and subsequently, closed the petitioner's evidence.

9. The learned counsel for the petitioner submits that by closing the right of the petitioner to lead his evidence, the learned Trial Court has deprived him of an opportunity to defend the proceedings initiated against him by the respondents. Further, the learned Trial Court has passed a non-speaking order ignoring the settled principles of law.

10. The learned counsel further submits that the learned Trial Court has failed to appreciate that the petitioner has already filed the list of witnesses along with the evidence by way of an affidavit within the time period stipulated by this Court.

11. Learned counsel for the petitioner submits that the learned Trial Court has erroneously held that the petitioner has failed to avail the opportunity granted to it by this Court.

12. Concluding his submissions, the learned counsel submits that the witness i.e. at serial no.2 was not summoned for 06.11.2023 as the matter was listed for the first time for hearing on the said date and there was no order for issuance of the summons. Therefore, the said witness could have only appeared on the directions of the learned Trial Court.

13. Moreso, the learned Trial Court failed to consider that on 06.11.2023, the petitioner was suffering from high fever and throat pain and therefore, could not appear before the learned Trial Court. The learned counsel had brought this fact to the notice of the learned Trial Court and had sought permission to file medical documents of the petitioner but surprisingly, the learned Trial Court has not recorded the said fact in its order. Further, the learned counsel for the petitioner submits that the medical prescriptions are



annexed with the present petition.

14. Refuting the above submissions, the learned counsel for the respondent submits that the impugned order is correct, considering the ample opportunities already granted to the petitioner pursuant to this Court's order dated 06.10.2023. However, the petitioner did not avail any of these opportunities. Thus, no interference is required by this Court.

15. Pertinently, the right of the petitioner to lead his evidence was initially closed on 22.12.2022 and the matter was fixed for recording the evidence of the respondent for 16.02.2023. Due to a stay operating under the order of this Court, the learned Trial Court adjourned the matter to 27.07.2023. Thereafter, the petitioner approached this Court by filing CM(M) 1339/2022 and he was granted two weeks' time from 07.10.2023, which was the date scheduled before the learned Trial Court to file the evidence by way of an affidavit along with the list of witnesses within 15 days.

16. The same came to be filed by the petitioner on 21.10.2023 and on the next date of hearing before the learned Trial Court, the learned Presiding Officer was on leave. On 06.11.2023, the petitioner's right to lead PE was again closed. Needless to say that the learned Trial Court was right in its approach to close the PE as this Court had granted only one opportunity to the petitioner to conclude PE. Ardently, it was the duty of the petitioner to comply with the directions of this Court and to make its witnesses available before the learned Trial Court on 06.11.2023 for concluding PE, which it failed to do.

17. The reason assigned by the petitioner on 06.11.2023 is that due to his ill health, he could not appear on the said date of hearing. It is not disputed that on the said date of hearing, the petitioner had not summoned its any



other witness.

18. Considering the above facts and in the interest of justice, the petitioner is granted a single opportunity to examine his witnesses on the date as to be fixed by the learned Trial Court, subject to cost of Rs. 15,000/-. The learned Trial Court to ensure short adjournment is granted for recording the evidence of the petitioner. The impugned order dated 06.11.2023 is set aside. The petition is accordingly, allowed.

SHALINDER KAUR, J.

APRIL 26, 2024/ss