



2024:DHC:7955



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 14th October, 2024***

+ CM(M) 3604/2024 & CM APPL. 60207/2024

S.B. ENTERPRISES

.....Petitioner

Through: Mr. Anuj, Advocate

versus

SHREE GANESH STEEL TRADERS

.....Respondent

Through: Mr. Sandeep Kumar, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 60207/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3604/2024

1. Petitioner is defending a recovery suit and is aggrieved by order dated 09.09.2024 whereby learned Trial Court has dismissed his application seeking issuance of summons to the witness. Since no list of witnesses was submitted by the petitioner, it resulted in dismissal.
2. However, there is one more peculiar aspect of the case which cannot be lost sight of.
3. Earlier also, the defendant had approached this Court by filing a petition under Article 227 of the Constitution of India and when said petition i.e. CM(M) 2971/2024 was taken up, learned counsel for petitioner (defendant before the learned Trial Court) himself undertook that it would only examine Mr. Ajay Kumar Bansal. Said petition was thus allowed,



while also taking note of the concession given by the learned counsel for petitioner.

4. Quite evidently, since petitioner now wishes to examine one more witness i.e. Mr. Devender Kumar Jain, he wants to wriggle out of the undertaking which he had given to this Court on the earlier occasion i.e. on 22.07.2024.

5. Learned counsel for the petitioner has, however, drawn the attention of this Court towards Para-6 of written statement filed by the defendant wherein, there is reference about Mr. Devender Kumar Jain and it is submitted that in case opportunity is not given, it may seriously prejudice to the defence of the defendant.

6. Ideally, petitioner should have been very circumspect and watchful while making a responsible statement before this Court.

7. Mr. Sandeep Kumar, learned counsel for the respondent, who appears on advance notice, states that though the petition does not disclose any justifiable reason, in order to ensure that there is no further delay in the suit, he would have no objection if one opportunity in this regard is granted to the defendant, *albeit*, with imposition of reasonable cost.

8. Case is reportedly fixed before the learned Trial Court on 13.11.2024 for recording of evidence of said Mr. Ajay Kumar Bansal.

9. Keeping in mind the overall facts of the case and the fact that name of said Mr. Devender Kumar Jain is mentioned not only in the written statement but also in the application which had been moved for seeking to summon him, petition is disposed of with the direction that defendant shall be permitted to examine said Mr. Devender Kumar Jain provided the affidavit of such proposed witness is submitted before the learned Trial Court within two



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weeks from today with advance copy to opposite counsel and subject to cost of Rs. 10,000/- which shall also be cleared before the learned Trial Court on the date fixed before the learned Trial Court.

10. It is clarified at the cost of repetition that defendant would be permitted to examine said two witnesses only i.e. Mr. Ajay Kumar Jain and Mr. Devender Kumar Jain and on the date fixed before the learned Trial Court, both the witnesses would appear so that they can be subjected to cross-examination. No further opportunity in this regard would be given to defendant.

11. Petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 14, 2024/dr