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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 3632/2024 & CM APPL. 61109/2024**
HINDUSTAN ZINC LIMITEDPetitioner

Through: Mr. Raj Shekhar Rao, Sr. Advocate
with Ms. Pallav Mongia, Mr. Amritesh
Krishna and Mr. Harshil Wason,
Advocates.

versus

**ZILLION INFRA PROJECTS PVT LTD (FORMERLY DURHA
CONSTRUCTIONS)**Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

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18.10.2024

CM APPL. 61110-61111/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

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1. Petitioner is defending a Civil Suit seeking recovery.
2. Petitioner-company is a sole defendant.
3. Admittedly, the defence of the defendant has already been struck off and such order has even attained finality.
4. The cross-examination of authorized representative of plaintiff is under way.
5. The defendant moved an application under Section 165 of Indian Evidence Act, 1872 (now Section 168 of Bhartiya Sakshaya Adhiniyam, 2023) that the court may invoke its power under said section and may ask questions from the witness concerned and may also even order such witness to produce the e-mails, which the plaintiff had received and which had been sent by none other than the defendant, in order to reach just and fair decision of the case.

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6. It is not in dispute that when the defendant had been cross-examining the authorized representative of plaintiff and during earlier cross-examination, certain such e-mails were shown to the witness and his answers, in response to those e-mails, have also been duly recorded.

7. Though, the aforesaid application has been dismissed by the learned Trial Court while observing that defendant cannot be permitted to ask the Court to exercise its power under Section 165 of Indian Evidence Act as that would permit him to do indirectly which is prohibited for him to do directly, *it also made an observation that the aspect related to such e-mails was within the ambit of the defence and not within the ambit of impeachment of the credit of a witness.*

8. Learned Senior Counsel for the petitioner states that such observation might come in his way when the Court, while hearing final arguments, appreciates the evidence of said witness. He only states that learned Trial Court may be requested to consider the evidence, without being getting influenced by the aforesaid observation.

9. Learned counsel for the respondent/plaintiff, who appears on advance notice, states that, without prejudice to his rights and contentions, he would have no objection to the above.

10. Keeping in mind the overall facts and circumstances of the case, the present petition is disposed of directing the learned Trial Court that while hearing the final arguments, it shall not get influenced by the aforesaid observation and would appreciate the evidence, strictly, within the scope and ambit of Indian Evidence Act.

MANOJ JAIN, J

OCTOBER 18, 2024/ss

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