



\$~96

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 23rd October, 2024*

+ CM(M) 3692/2024 & CM APPL. 62372-62373/2024

MUKEEM KHAN

.....Petitioner

Through: Mr. Shakeel Ahmd with Mr. M. Asif,
Advocates.

versus

MIM TRADING AND CONSTRUCTION COMPANY

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit for recovery.
2. It seems that parties are also related to each other. This is evident from the facts mentioned in para No. 3 of the preliminary objection contained in the written statement.
3. After the conclusion of plaintiff's evidence, the case was fixed for defendant's evidence.
4. On 16.04.2024, though the affidavit of DW-1-Mr. Raees Khan (father/SPA holder of defendant) was filed but the copy, thereof, was not supplied well in advance. Moreover, learned counsel for the defendant was also unable to appear on account of some personal exigency and, therefore, the matter was adjourned by learned Trial Court for 16.05.2024, subject to cost of Rs. 3,000/-.
5. When the matter was taken up by learned Trial Court on 16.05.2024, some medical documents were furnished from the side of the defendant in order to show that the witness was unwell. Learned Trial Court



accommodated the defendant again and gave one more opportunity to him to appear for cross-examination on 12.07.2024.

6. On 12.07.2024, the witness did not appear and was stated to be unwell. It seems that though the Court was not impressed with the record so produced and was of the view that the defendant wanted to prolong the proceedings by taking adjournment on one pretext or other, however, in the interest of justice it still granted one more opportunity to him to appear for evidence and was also burdened with a cost of Rs. 10,000/-.

7. On the next date i.e. 06.09.2024, there was no change in the situation as again, said witness did not turn up and it was, merely, claimed that since he was contesting Assembly Election in State of Haryana, he was unable to appear. The cost was also not cleared. Learned Trial Court keeping in mind the various previous order-sheets came to the conclusion that the defendant was taking the present litigation as leisure litigation and, therefore, his right to lead evidence was closed.

8. An application was moved by the defendant under Order XVIII Rule 17 CPC but such application has also been dismissed.

9. It is in the above said backdrop that petitioner now seeks indulgence of this Court, claiming that else there would be a serious prejudice to his case.

10. This Court cannot be oblivious of the fact that the suit is commercial in nature and, therefore, even otherwise, it needs to be fast-tracked. It is also quite obvious that the learned Trial Court, before the passing the impugned order, had given sufficient indulgence to the defendant but defendant himself is liable for the position he now finds himself in, as despite the fact that he had been given several opportunities, he did not avail any of those as he did not turn up for the purposes of recording of his evidence.



11. Keeping in mind the overall facts and circumstances of the case, this Court, while exercising supervisory powers under Article 227 of Constitution of India, does not find any reason to interfere with the impugned order.
12. The petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 23, 2024/*sw*