



2025:DHC:10113



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

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Date of Decision: 17.11.2025

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CM(M) 1683/2025

M/S EC CONSTRUCTIONS P LTD

.....Petitioner

Through: Mr. Prabhjyot Singh, Advocate.

versus

NEERAJ ZUTSHI AND ANR

.....Respondents

Through: Mr. Sahil Gupta and Mr. Arjun Aggarwal, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA

ORDER (ORAL)

1. Petitioner/plaintiff has assailed orders dated 01.08.2025 and 11.08.2025 of the learned trial court. By way of order dated 01.08.2025, the learned trial court closed opportunity of petitioner/plaintiff to further cross examine DW1 since cost imposed for earlier adjournment was not paid and not even any application for waiver of the cost was moved. By way of order dated 11.08.2025, application of petitioner/plaintiff for recall of order dated 01.08.2025 was dismissed. In the interest of expeditious disposal of suit, which was instituted in the year 2006 and is at fag end, learned counsel for both sides request for permission to address final arguments today itself. As such I have heard learned counsel for both sides.

2. Learned counsel for petitioner/plaintiff submits that he was not granted fair opportunity to cross examine DW1. It is contended by learned counsel that on 01.08.2025, he had sought a pass over till 02:30pm but the same was denied by the learned trial court, so the impugned orders are not sustainable in the eyes of law. Learned counsel for petitioner/plaintiff

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submits that on 01.08.2025, the learned trial court ought to have granted pass over to ensure fair trial because DW1 is the defendant himself. No other argument has been advanced.

3. Learned counsel for both respondents appearing on advance intimation accepts notice and strongly opposes the present petition, contending that petitioner/plaintiff has been deliberately protracting the proceedings, so does not deserve any further indulgence. In this regard, learned counsel for respondents has also produced before me copies of various orders of the learned trial court to demonstrate the conduct of the petitioner/plaintiff.

4. At the outset, the submission of learned counsel for petitioner/plaintiff that he had sought pass over on 01.08.2025 till 02:30pm is found not in consonance with the impugned order. As reflected from the impugned order dated 01.08.2025, on that day, the matter was listed for cross examination of DW1 and what was sought by counsel for petitioner/plaintiff was not pass over till 02:30pm but adjournment. As regards the adjournment request also, it would be significant to note that first the adjournment on that day was sought on the ground of illness of the main counsel, but on being called upon to submit medical documents, the proxy counsel who sought adjournment stated that due to some family exigency, main counsel was not available. To say the least, such falsehood coming from a counsel before the trial court as well as this court is deprecated.



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5. Be that as it may, as mentioned above, for earlier adjournment cost of Rs.5,000/- had been imposed on petitioner/plaintiff, but the same was neither paid nor sought to be waived. That being so, the learned trial court on 01.08.2025 was fully justified in closing further cross examination of DW1. Rather, in the light of Section 35B CPC, as explained by the Hon'ble Supreme Court in the case of *Manohar Singh vs. D.S. Sharma*, (2010) 1 SCC 53, the learned trial court could have completely prohibited the petitioner/plaintiff from participating in the further proceedings of the suit. But the learned trial court, exercising discretion, took a lenient view and posted the matter to 11.08.2025 for recording evidence of DW2. It is informed by both sides that subsequently, DW2 as well as DW3 also were completely examined before the trial court.

6. Coming to the second order impugned in the present petition, as mentioned above, on 11.08.2025, after complete examination of DW3, petitioner/plaintiff filed an application seeking recall of order dated 01.08.2025, taking a plea that on 01.08.2025, main counsel for petitioner/plaintiff was in personal difficulty, which was informed to the opposite counsel but the latter did not object. The said application was strongly opposed by learned counsel for respondents/defendants. After traversing through the previous record, the learned trial court observed that earlier, on three consecutive dates, petitioner/plaintiff had taken adjournments to cross examine DW1, despite the suit being of the year 2006. On the basis of such record, the learned trial court dismissed the application by impugned order dated 11.08.2025.

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7. Perusal of the trial court orders, as produced by learned counsel for respondents shows that on almost each date, either adjournment or pass over was sought on behalf of petitioner/plaintiff. From submissions advanced today, it appears that the learned counsel for petitioner/plaintiff is under mistaken impression that pass overs are matter of right of the counsel. That is not so. Adjournments and pass over are courtesies extended by the court to accommodate the counsel. But that cannot be allowed to make the opposite side suffer. It is for the counsel to maintain their diary so that the other side may not suffer.

8. Further, it is also not a case where DW1 was not cross examined at all. DW1 was chief examined on 27.03.2024 and his cross examination was deferred at request of counsel for petitioner/plaintiff despite the fact that copy of the chief affidavit had already been supplied way back on 05.02.2020.

8.1 Despite the span of 04 years, counsel for petitioner/plaintiff requested for adjournment on 27.03.2024 after DW1 was chief examined.

8.2 Even thereafter, on 30.08.2024, after part cross examination of DW1, learned counsel for petitioner/plaintiff again requested for adjournment in order to carry out further cross examination, which was allowed.

8.3 On the next date, 06.03.2025, once again it is the counsel for

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petitioner/plaintiff who sought adjournment.

8.4 On the next date, 08.05.2025, once again adjournment was requested by proxy counsel for petitioner/plaintiff on the ground that main counsel was unable to appear, which adjournment request was allowed subject to cost of Rs.5000/- and matter was adjourned to 01.08.2025.

8.5 Despite that, on 01.08.2025, neither cost was paid nor any application for waiver of cost was filed nor even counsel for petitioner/plaintiff appeared and as mentioned above, false submissions were made.

9. Thence, learned counsel for respondents is correct in submitting that the petitioner/plaintiff has been deliberately protracting the suit proceedings and in order to ensure disposal of the suit pending since the year 2006, the learned trial court was fully justified in closing cross examination of DW1.

10. Considering the aforesaid, I do not find any infirmity, much less perversity in the impugned orders, so both the impugned orders are upheld and the present petition is dismissed with cost of Rs.10,000/- to be paid by petitioner/plaintiff to respondents through respondent no.1 within two weeks.

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**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 17, 2025/ry

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