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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 2587/2024**

RAJIV ANEJA

..... Petitioner

Through: Mr. Vidur Mohan, Mr. Kaushal
Kumar Singh and Mr. Sourabh
Kumar, Advs.

versus

AMAN VACHHER & ANR.

..... Respondents

Through: Mr. V.K. Malik, Mr. Rahul Malik,
Ms. Neeta Malik and Mr. Afnan,
Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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16.05.2024

CM APPL. 29312/2024—Exp.

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

CM(M) 2587/2024, CM APPL. 29311/2024—stay

3. The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 18.08.2023 and 23.02.2023 passed by the Learned Additional District Judge -02, Central District, Tis Hazari Courts, Delhi (“Trial Court”) in case bearing no. CS DJ No. 616267/2016 titled as “*Rajiv Aneja vs Aman Vachher*” whereby the learned trial court dismissed the application of the petitioner filed under Section 151 of Code of Civil Procedure, 1908 (“CPC”) seeking review of the order dated 23.02.2023 vide which the petitioner’s right to

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cross-examination and to lead further plaintiff evidence was closed.

4. Briefly the facts recite with the petitioner instituting the present suit for recovery of Rs. 1.11 Crore against the respondents before the learned trial court. The respondents were served with the summons of the suit and subsequent thereto the written statement was filed by the respondents. Thereafter, the issues in the suit were framed and the matter was listed for examination of the petitioner. After the said examination in chief was concluded on 28.04.2017, the matter was adjourned for cross-examination of the petitioner on 07.06.2017. Whereon, the petitioner again sought time to get himself cross-examined, matter was posted for 30.11.2017.

5. The learned counsel for the petitioner submits that for various reasons the cross-examination of the petitioner could not take place on various dates of hearing such as, the learned trial court did not hold court on few dates of hearing and for other times the petitioner was suffering from Covid-19 thrice. Thus, a final opportunity was granted to the petitioner on 23.02.2023. However, owing to the ill health, the petitioner could not appear before the learned trial court for his cross-examination on 23.02.2023 and the learned trial court therefore closed the right of the petitioner to get himself cross-examined.

6. Learned counsel submits that immediately thereafter the petitioner moved an application under Section 151 CPC seeking recall of the order dated 23.02.2023 vide which his evidence was closed. The said application came to be dismissed by the learned trial court vide order dated 18.08.2023. The learned counsel submits that the learned trial court overlooked and did not consider the reasons put forth by the



petitioner for his absence for recording of his examination on 23.02.2023.

7. Learned counsel further submits that the petitioner was also hospitalized for more than 2 weeks. Thus, the absence before the learned trial court was for a bonafide reason and was neither intentional or deliberate. Further, out of 7 dates of hearing, two dates of hearing the learned presiding officer was on leave. Further, a medical certificate was also produced by the petitioner reflecting about the ill health of the petitioner on account of Covid-19.

8. Further submits that the learned trial court dismissed the application holding that the medical record produced is not sufficient and erred in as much as it failed to acknowledge that medical certificate issued by a medical practitioner though same bearing the letter head of an IVF Centre, is also a qualified MBBS doctor who can diagnose patient and prescribe medicines.

9. Reliance is placed on the judgement of the Hon'ble Supreme Court in *State Bank of India vs Km. Chandra Govindji* 2000 (8) SCC 532 wherein it was held that the aspect need not be examined again if on the date on which the adjournment is sought for the party concerned has a reasonable ground. Mere fact that in the past adjournments had been sought for would not be of any materiality.

10. Concluding submissions, the learned counsel submits that in the interest of justice, he may be granted one opportunity for conducting the cross-examination and to lead remaining plaintiff evidence. The petitioner is ready and willing to appear before the learned trial court for his cross-examination as well as to pay the cost imposed.



11. Issue notice.

12. The learned counsel for the respondents appearing on advance notice, accepts notice and submits that even on the various dates of hearing, the petitioner did not appear and as well as the costs imposed by the learned trial court were not paid. Pertinently, no medical certificate had been produced till date. Furthermore, the application filed by the petitioner is not even filed under a correct provision of law. The petitioner has deliberately delayed the proceedings for the last 2 years. The petitioner had not appeared before the learned trial court on as many as 7 dates of hearing and also the medical record furnished by the petitioner was not found to be sufficient by the learned trial court.

13. The learned counsel submits that the Gynaecologist is not an appropriate/competent medical practitioner to determine whether a person has Covid-19 or not. There was no proof furnished by the petitioner to support his contention that he had Covid-19 at the relevant time.

14. Learned counsel also submits that the learned trial court has already granted various final opportunities to the petitioner to get himself cross-examined and even when the adjournment in view of petitioner suffering from Covid-19 was allowed, again a final opportunity was granted to conclude the cross-examination of the petitioner on the next date of hearing. Thus, the learned trial court rightly passed the impugned orders and thus no interference is required by this court under Article 227 of the Constitution of India.

15. Heard. Record as well as impugned orders perused.

16. Pertinently, the petitioner was to stand in the witness box for his



cross examination for the first time on 07.06.2017 and his right of cross examination as PE was closed vide order dated 23.02.2023

17. The learned counsels for the parties took this Court through various orders passed by learned Trial Court. On perusal of those, it is clear that the adjournments were not solely requested on behalf of the petitioner. On some occasions, it was also requested on behalf of the respondents. Moreso, on one or two occasions even the learned Presiding Officer was on leave. The fact cannot be ignored that during this period, the country was also reeling under Covid -19 Pandemic. Thus, all the adjournments cannot be attributed to the fault of the petitioner since there were other reasons also.

18. The learned Trial Court has also disputed the Medical Certificate issued by the Gynaecologist certifying that the petitioner was suffering from a high grade fever. Before disputing the said medical certificate, it was necessary for the learned Trial Court to have had the medical certificate verified from the concerned doctor who had issued it. Perhaps, the concerned doctor specialised as a Gynaecologist but was also a medical practitioner.

19. In view of the facts and circumstances, one opportunity for petitioner's cross examination and to conclude his PE is granted to the petitioner, subject to cost of Rs. 10,000/- along with the previous cost as imposed by the learned Trial Court which has yet not been paid by the petitioner, be paid to the respondents before the learned trial court on the next date of hearing.

20. The learned Trial Court may permit the evidence of the petitioner either on the next date fixed before it or on any other date convenient to



its board.

21. The petition is allowed. Pending application stands disposed of.

SHALINDER KAUR, J.

MAY 16, 2024
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