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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1475/2018 and CM No. 50708/2018**

RAM LAXMAN YADAV Petitioner
Through: Mr.Rajan Bhatia, Advocate

versus

UNION OF INDIA & ORS Respondents
Through: Mr.Dev. P. Bhardwaj, CGSC with
Mr.Jatin Teotia, Advocate for R-1 to
3

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **31.01.2019**

Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 26.9.2018 of the learned Civil Judge (Central), Tis Hazari Courts, in CS SCJ No. 94057/2016 vide which an application under Section 151 CPC filed by the petitioners as plaintiff of the said suit seeking the setting aside of the order dated 01.05.2018 was declined and the prayer made by the applicant/petitioner i.e., the plaintiff of the said suit seeking permission to adduce the evidence was dismissed.

The petition has been vehemently opposed on behalf of the respondents no. 1 to 3 submitting to the effect that the facts are spelt forth in the impugned order itself and that several opportunities have already been granted to the petitioner herein to complete the plaintiff's evidence. The averments that have been made in the

petition and as observed vide the impugned order *inter alia* relate to the fact that on the date 1.5.2018 though the plaintiff had appeared before the Court and apprised about the non availability of his counsel on account of the fact that his counsel had undergone a surgery but the Court had closed the evidence of the plaintiff if being an old matter as reflected vide the impugned order.

The impugned order indicates that on the date 19.4.2018 when the matter was fixed for plaintiff's evidence PW-1 was present but a request was however made by the proxy counsel for the plaintiff on the ground that the counsel had not come as he had undergone a surgery as a consequence of which the matter had been renotified for the date 1.5.2018 with the last and final opportunity having been granted to the plaintiff to lead the evidence with it having been specifically ordered that no adjournments would be granted to either of the parties on 1.5.2018.

It has thus been submitted on behalf of the petitioner that it was beyond the petitioner's control to put forth his testimony and that in any event the witness could have been allowed to be cross examined by the respondent. A perusal of the impugned order reflects that at least **22 opportunities** have been granted to the petitioner herein to complete the plaintiff's evidence and the impugned order brings forth also that though the issues in the matter were framed on 17.8.2004, thereafter 22 opportunities to lead plaintiff's evidence were granted to the plaintiff i.e., the petitioner and specifically on the dates 17.7.2009, 23.8.2010, 11.1.2011, 13.7.2011, 8.12.2011, 7.3.2012, 5.7.2012, 22.8.2012 there was no plaintiff's witness present and the affidavit for

evidence was tendered only on 20.11.2012. The learned Trial Court has taken into account the observations of the Hon'ble Supreme Court in *Shiv Cotex v. Trigun Auto Plast Pvt. Ltd.* : (2011) 9 SCC 678, to the effect:

“That the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or change of lawyer or continuous illness of lawyer or similar grounds were held to be not justifying more than three adjournments to a party during the hearing of the suit. The past conduct of the party in the conduct of proceedings was held to be an important circumstance to be kept in view whenever a request for adjournment is made. It was reiterated that a party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be led by it or the matter should be heard. It was further held that if the parties to the suit do not co-operate in ensuring the effective work on the date of hearing, they do so at their own peril.”

Taking the same into account and the series of adjournments that have been sought by the plaintiff and granted as reflected vide the impugned order, it is not considered appropriate to grant any further opportunity to the plaintiff to lead evidence.

The petition and the accompanying applications are declined.

ANU MALHOTRA, J

JANUARY 31, 2019/sv