

(2022) 05 DEL CK 0127

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 412 Of 2022, Civil Miscellaneous Application No. 21189 Of 2022

M/S Bharat Investment Corporation

APPELLANT

Vs

Sanjana Saini

RESPONDENT

Date of Decision : 19-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 151, Order 18 Rule 17

Citation : (2022) 05 DEL CK 0127

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Mohd. Ahmed, Hira Lal Govind Ram

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. Despite service of notice, there is no appearance on behalf of respondent.
2. The matter has been passed over and called out at second time. The respondent is still not available.
3. The court has accordingly heard learned Counsel for the petitioner and proceeds to dispose of the petition, as the issue involved is short.
4. The impugned order, dated 4th March, 2022, was passed by the learned Additional Rent Controller ("the learned ARC") in E No 78997/2016 (Smt. Sanjana Saini v. Bharat Investment Corporation), which was an eviction petition preferred by the respondent against the petitioner.
5. Given the limited nature of the controversy in these proceedings, it is not necessary to advert to the specifics of the dispute between the parties. Suffice it to state that vide order dated 14th December, 2021, the learned ARC rejected the request, of the petitioner (the respondent before the learned ARC), seeking

an adjournment on the ground of indisposition of the respondent's witness, who was a senior citizen.

6. The learned ARC was of the opinion that as the matter had been adjourned since long, awaiting recording of the petitioner's evidence, and costs had also been imposed on the petitioner in that regard, no occasion arose to grant any further opportunity to the petitioner to lead evidence.

7. The right of the petitioner (the respondent before the learned ARC) to lead his evidence was, therefore, closed by the learned ARC, on 14th December, 2021.

8. The petitioner moved an application under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), seeking recall of the aforesaid order dated 14th December, 2021. Said application has come to be dismissed by the learned ARC vide order dated 4th March, 2022.

9. The following passages, from the impugned order, merit reproduction:

"It is stated in the application that the respondent is a permanent resident of Mumbai. It is averred that on 21.09.2019, the matter was kept for 13.11.2019 for leading of respondent's evidence. However, on 13.11.2019, due to strike of Advocates, the matter was adjourned and kept for 07.02.2020. On 07.02.2020, due to illness of the respondent and because he is resident of Mumbai, he could not appear and the matter was adjourned to 21.04.2020.

On 21.04.2020, there was lockdown imposed due to Covid-19 pandemic and on 18.08.2020, no one joined Cisco Webex and the matter was adjourned to 21.10.2020 for respondent's evidence. On 21.10.2020, no one appeared on behalf of the parties on video conferencing and therefore the matter was adjourned to 13.01.2021.

On 13.01.2021, the matter was taken up by video conferencing and therefore evidence could not be recorded. The case was adjourned to 07.04.2021.

On 07.04.2021, evidence could not be recorded since respondent was a resident of Mumbai and due to increase in the number of Corona patients, there were restrictions to come to Delhi. Matter was adjourned to 24.08.2021. On the said date, matter was taken up by video conferencing. However, no one appeared and the case was adjourned to 14.12.2021.

On 14.12.2021, matter was taken up physically. However, due to illness of the respondent being senior citizen aged about 78 years and suffering from various ailments, he was advised to stay at home. Therefore, he could not appear before the Court.

It is stated that evidence by way of affidavit of the respondent is ready and its copy will be supplied to petitioner with the permission of the Court.

It is stated that non-appearance of the respondent is neither intentionally nor deliberate. It is prayed that permission be granted to the respondents to lead

evidence.”

10. Reiterating his earlier decision that several opportunities had been granted to the petitioner to lead evidence, and expressing a view that if, despite grant of last opportunity, further adjournment was sought, the direction of grant of last opportunity would become meaningless, the learned ARC rejected the petitioner’s application under Order XVIII Rule 17 CPC and held that the petitioner was not entitled to any further opportunity to lead evidence.

11. I have heard Mr. Mohd. Ahmed, learned Counsel for the petitioner, and perused the record.

12. It is axiomatic that the right to lead evidence, in support of their respective stands, is a valuable vested right in parties in any civil or criminal litigation, and, save for exceptional reasons, said right should not be lightly forfeited.

13. Having said that, if a party is acting in a recalcitrant fashion, and refusing to make the witness available for examination/cross-examination on repeated occasions without due justification, the court may, in a given case, close the party’s right to lead evidence.

14. Ordinarily, this is a matter within the discretion of the court which takes a call on the request of the party to lead evidence, and the court may be ill-inclined, in a petition under Article 227 of the Constitution of India, to interfere. Having said that, at all times, substantial justice has to inform the approach of the court, and this principle applies equally to the court which passed the order under challenge as to the court which is seized of the challenge under Article 227 of the Constitution of India. The self-imposed proscriptive limitations under Article 227 of the Constitution of India cannot be permitted to bind the hands of a court where, in the process, the cause of substantial justice would be the causality.

15. A reading of the passages extracted hereinabove from the impugned order dated 4th March, 2022, indicate that the inability of the petitioner to lead evidence was not owing to any avoidable negligence, but was largely for valid and unavoidable reasons.

16. The matter was first listed for leading of the petitioner’s evidence on 13th November, 2019, on which date advocates were on strike. Accordingly, the matter was adjourned to 7th February, 2020. On that date, the petitioner was unwell and the matter was adjourned to 21st April, 2020 [One may refer, in this context, to the judgment of the Supreme Court in *State Bank of India v. Km. Chandra Govindji*, (2000) 8 SCC 532, in which the Supreme Court has held that, once adjournments are granted in a matter, the justifiability of the ground on which the said adjournments were sought becomes irrelevant and, in a challenge to an order refusing to grant further adjournment, the court has to examine only whether the ground for adjournment, urged on the last date of hearing, was justified or not.]. On 21st April, 2020, the nation was in a state of lockdown,

consequent to Covid-2019 pandemic. On the next date of hearing i.e. 18th August, 2020, the matter was taken up virtually and, as no one joined the proceedings, it was adjourned to 21st October, 2020 for the petitioner's evidence. Again, as no one joined the virtual proceedings on 21st October, 2020, the matter was adjourned to 13th January, 2021.

17. On 13th January, 2021, the matter was again taken up virtually; ergo, the evidence could not be recorded. The matter was therefore adjourned to 7th April, 2021.

18. On 7th April, 2021, consequent to resurgence of Covid-2019 pandemic, and owing to restrictions put in place on travel from Mumbai to Delhi, the respondent, who was a resident of Mumbai, could not come to Delhi, as a result of which the matter was adjourned to 24th August, 2021.

19. On 24th August, 2021, again, the matter was taken up virtually and was adjourned to 14th December, 2021. On 14th December, 2021, the evidence of the petitioner was closed.

20. A bare glance at the aforesaid sequence of dates would reveal that though, undoubtedly, the matter was adjourned on several occasions after the petitioner was first directed to lead evidence, the petitioner could not be attributed any avoidable negligence or indolence in prosecuting the proceedings before the court, or in leading evidence.

21. In view thereof, I am of the opinion that, keeping the interests of substantial justice in mind, the petitioner ought to be granted one opportunity to lead his evidence.

22. Learned Counsel for the petitioner submits that the matter is next listed before the learned ARC tomorrow i.e. 20th May, 2022 and that the petitioner, who has to be examined as RW-1, and is in Delhi, will appear before the learned ARC and is ready to be subjected to examination-in-chief and cross-examination.

23. He also undertakes that, the remaining three witnesses of the petitioner (the respondent before the learned ARC), whose evidence was permitted to be led by order dated 24th May, 2019 would be made available by the petitioner for recording of their evidence on any date that the learned ARC may choose to fix for the purpose.

24. Noting the above undertaking and binding the petitioner (the respondent before the learned ARC) thereby, the impugned order dated 4th March, 2022 is quashed and set aside.

25. It is made clear that the petitioner (the respondent before the learned ARC) should present himself for recording of his evidence tomorrow i.e. 20th May, 2022 and that the petitioner should have the remaining three RWs available for recording of their evidence on the next date to be fixed by the learned ARC.

26. This petition stands allowed accordingly, with no orders as to costs.

27. A copy of this order be given dasti under the signature of the Court Master to learned Counsel for the petitioner.