

\$~10 (Appellate)

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

+ CM(M) 5/2019 & CM APPL. 123/2019

ACE TEL LINKERS PVT LTD

..... Petitioner

Through: Mr. Ravi Kapoor, Mr.
A.N.Tiwari and Mr. Rishav Ambastha,
Advs.

versus

MR SOM PRAKASH YADAV & ORS

..... Respondents

Through: Mr. Inder Singh and Mr. Ram
Kishan, Advs. for R-1
Mr. Mohit Verma, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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12.07.2022

1. This petition, under Article 227 of the Constitution of India, assails orders dated 11th July 2018 and 25th July 2018 passed by the learned Additional District Judge (“the learned ADJ”) in CS 8107/2016 (*Ace Tel Linkers Pvt. Ltd. v. Som Prakash Yadav*).

2. The issue in controversy is short.

3. The order dated 11th July 2018 closes the right of the petitioner, as the plaintiff in the suit, to lead his evidence, and the order dated 25th July 2018 rejects the application filed by the petitioner, after passing of the order dated 11th July 2018, seeking one more opportunity to lead evidence.

4. Consequent to framing of the issues on 17th July 2017, CS 8107/2016 was listed on 2nd November 2017 for leading the evidence of the petitioner. The petitioner sought an adjournment, which was granted subject to payment of costs of ₹ 5,000/- directing the matter to be re-notified on 16th February 2018.

5. On 16th February, 2018, the petitioner again sought an adjournment on the ground that he had misplaced the office file. Nothing the fact that the petitioner had yet to pay costs of ₹ 5,000/-, as directed on 2nd November 2017, the matter was re-notified, by the learned ADJ, for 11th July 2018, 18th July 2018 and 25th July 2018 for leading of the petitioner's evidence.

6. Affidavit in evidence, on behalf of the petitioner, is yet to be filed.

7. On 11th July 2018, one Sadhana Singh, who was an employee of the petitioner company, appeared and submitted that Mr. Hemant Verma, the Director of the petitioner company, whose evidence the petitioner desired to lead, was out of India. She submitted that he used to visit India once a month. Noting the fact that on two earlier occasions, the petitioner had failed to produce his witness for leading his evidence, and that this was the third occasion, the learned ADJ closed the petitioner's right to lead evidence.

8. The petitioner filed an application for recall of the aforesaid

order dated 11th July, 2018, and for grant of one more opportunity to lead evidence. The said application was rejected by the learned ADJ *vide* order dated 25th July 2018, noting the fact that the petitioner had already availed three effective opportunities to lead evidence and was also in default of payment of costs of ₹ 5,000/-, imposed *vide* order dated 2nd November 2017.

9. The petitioner has now approached this Court under Article 227 of the Constitution of India.

10. I do not find that the aforesaid facts make out any case for this Court to interfere with the approach of the learned ADJ, in exercise of the supervisory jurisdiction vested in it by Article 227 of the Constitution of India. Nonetheless, learned Counsel for the respondent very fairly agrees to grant of one more opportunity to the petitioner to produce Mr. Hemant Verma, should the petitioner seek to lead his evidence, on the next date of hearing before the learned ADJ, which happens to be 18th July 2022.

11. In view thereof, this petition is disposed of by directing petitioner

(i) to file affidavit in evidence of Mr. Hemant Verma with the learned ADJ on or before 16th July 2022 and

(ii) to make Mr. Hemant Verma available physically for recording of his evidence before the learned ADJ on 18th July 2022, so that his examination-in-chief and cross examination

could be conducted by the learned ADJ on the said date.

12. Failure, on the part of the petitioner, to abide by either of these directives would result in *ipso facto* vacation of this order and revival of the orders dated 11th July 2018 and 25th July 2018 passed by the learned ADJ in CS 208107/2016.

13. This petition stands disposed of in the aforesaid terms with no order as to costs.

14. Pending applications, if any, also stands disposed of.

JULY 12, 2022

dsn

C. HARI SHANKAR, J

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