

\$~63(Appellate Side-List of 2022)

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM (M) 306/2022, CM APPL. 16699/2022 & CM APPL.  
16700/2022  
DEEPAK ..... Petitioner

Through: Mr. Chirag Arora, Ms. Sumati  
Sharma & Mr. Swalhit Sharma,  
Adv. with petitioner in person

versus

RAMESH SETHI ..... Respondent

Through: Mr. Sudhindra Tripathi & Mr.  
Garvil Singh, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGEMENT (O R A L)**

% **08.04.2022**

1. Learned Counsel for the parties have argued the matter and are agreeable to the matter being disposed of at this stage.

2. The petitioner is aggrieved by an order dated 16<sup>th</sup> November, 2021, passed by the learned Civil Judge (“the learned CJ”), whereby the right of the petitioner to lead his evidence, as the defendant before the learned CJ in CS 9739/2016, was closed.

3. The petitioner moved an application under Section 151 of the Code of Civil Procedure, 1908 (CPC), for modification of the order dated 16<sup>th</sup> November, 2021, and for permitting the filing of defence evidence. That application was dismissed *vide* order dated 05<sup>th</sup>

January, 2022. A further application, seeking review of the order dated 05<sup>th</sup> January, 2022, was also dismissed by the learned CJ *vide* order dated 11<sup>th</sup> March, 2022.

4. This petition, under Article 227 of the Constitution of India, assails all the three orders, i.e. the orders passed on 16<sup>th</sup> November, 2021, 5<sup>th</sup> January, 2022 and 11<sup>th</sup> March, 2022.

5. The issue in controversy being narrow, it is not necessary to allude to the specifics of the dispute between the parties. Suffice it to state that, by order dated 27<sup>th</sup> February, 2020, the petitioner was directed to file its defence evidence in the suit, on or before 22<sup>nd</sup> April, 2020. I may note, here, that Mr. Tripathi, learned Counsel for the respondent, has sought to contend that the petitioner had been remiss on earlier occasions. That, in my view, may not be of particular significance, especially in view of the law laid down by the Supreme Court in *State Bank of India vs. Chandra Govindji*<sup>1</sup>, in which case the Hon`ble Supreme Court held that, where the refusal of the Court below to grant adjournment on a particular date was under challenge, adjournments granted earlier were irrelevant, as there was a presumption that they were granted for good reason.

6. Before 22<sup>nd</sup> April, 2020, the COVID-2019 pandemic had struck the country. Given the constraints faced by litigants, the Supreme Court, on 23<sup>rd</sup> March, 2020, directed, in *Cognizance for Extension of*

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<sup>1</sup> (2000) 8 SCC 532

*Limitation, In Re*<sup>2</sup>, that periods of limitation in all proceedings, irrespective of whether the limitation was prescribed under general or special laws, and irrespective of whether delay was, or was not, condonable would stand extended w.e.f. 15<sup>th</sup> March, 2020, till further orders to be passed by the Supreme Court. Till the date on which the right of the petitioner to lead defence evidence was closed i.e. till 16<sup>th</sup> November, 2021, it is not in dispute that this order continued to remain in force.

7. Mr. Tripathi has drawn my attention to the judgment of the Supreme Court in *Sagufa Ahmed v. Upper Assam Plywood Product Pvt. Ltd.*<sup>3</sup>. In that case, the Supreme Court was dealing with a situation in which the normal period of limitation for moving the Court had expired prior to 15<sup>th</sup> March, 2020, and the litigant was seeking the benefit of the order dated 23<sup>rd</sup> March, 2020, in *Cognisance for Extension of Limitation*<sup>2</sup>, on the ground that the condonable period of limitation had expired after 15<sup>th</sup> March, 2020. The Supreme Court turned down the request, opining that the benefit of its order dated 23<sup>rd</sup> March, 2020, as available only to vigilant litigants and would not in any case apply where the normal period of limitation had expired prior to 15<sup>th</sup> March, 2020.

8. The learned CJ has held the aforesaid order dated 23<sup>rd</sup> March, 2020, of the Supreme Court as inapplicable to the facts of this case, as, according to him, the latitude granted by the Supreme Court was only

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<sup>2</sup> (2020) 9 SCC 468

<sup>3</sup> 2021 2 SCC 317

in respect of statutory periods of limitation or periods of limitation fixed by the law for the time being in force, whereas the requirement of the petitioner filing its defence evidence on or before 22<sup>nd</sup> April, 2020 was not on account of any statutory period of limitation but because of an order passed by the Court.

9. That aspect may not, however, be of much significance, as the learned CJ, has, in his subsequent order dated 05<sup>th</sup> January, 2022, noted thus:

*“Even if the valuable time of the parties lost in COVID-2019 pandemic is deducted, the defendant had enough time to file the affidavit of evidence on several occasions and the defendant has miserably failed to do so”.*

(Emphasis supplied)

10. This finding of the learned CJ, which is one of the grounds on which the learned CJ did not condescend to re-visit his earlier order dated 16<sup>th</sup> November, 2021, is not factually correct. As already noted hereinabove, before 22<sup>nd</sup> April, 2020, being the date by which defence evidence was to be led by the petitioner as per the order dated 27<sup>th</sup> February, 2020, the COVID-2019 pandemic had already struck and the working of the Courts were in a state of limbo.

11. The first occasion when the Court functioned physically, after normal resumption of work was on 25<sup>th</sup> September, 2021, on which date, the Bar observed a strike. The next date of hearing was on 16<sup>th</sup> November, 2021, when the impugned order, closing the right of the

petitioner to lead defence evidence, was passed.

**12.** If one were to exclude the period lost in the COVID-2019 pandemic, as the learned CJ has himself condescended to do, the first date when the Court functioned physically was, therefore, 25<sup>th</sup> September, 2021. That being the ground position, without dwelling any further into the aspect of negligence or the issue of whether the petitioner could have been more vigilant, I am of the opinion that the learned CJ ought to have granted one more opportunity to the petitioner to lead defence evidence.

**13.** The right to lead evidence is pivotal to a fair trial and partakes of the character of natural justice and fair play. No doubt, where a party is unconscionably indolent, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties to an adequate opportunity to place their respective stands on record, the Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like.

**14.** Given the peculiar facts of the present case, as (i) the learned CJ had granted time till 22<sup>nd</sup> April, 2020 to the petitioner to lead evidence, (ii) prior to the said date, the COVID-2019 pandemic had struck and w.e.f. 15<sup>th</sup> March, 2020, working of courts came to a near standstill, (iii) the first occasion when the learned CJ functioned physically, thereafter, was on 25<sup>th</sup> September, 2021, when the Bar was on strike, and, (iv) on the very next date, i.e. 16<sup>th</sup> November, 2021, the

learned CJ closed the right of the petitioner to lead defence evidence, I am of the opinion that one more opportunity ought to be granted to the petitioner.

**15.** In view thereof, the impugned orders are quashed and set aside, to the extent they closed the petitioner's right to lead defence evidence.

**16.** The petitioner is directed to file its affidavit of evidence positively within ten days from today.

**17.** Learned Counsel for the petitioner, is, therefore, granted ten days and no more to file affidavit of evidence of its defence witnesses, and to produce the defence witnesses for cross-examination and further proceedings before the learned CJ on 5<sup>th</sup> May, 2022, when the matter is listed next. No adjournment shall be granted to the petitioner on any account whatsoever. It would be the responsibility of the petitioner to have the defence witnesses ready for cross-examination on the said date.

**18.** This petition stands disposed of in the aforesaid terms with no orders as to costs.

**C. HARI SHANKAR, J**

**APRIL 8, 2022**

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