

HIGH COURT OF DELHI

Bench: HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

Date of Decision: December 7, 2023

CM(M) 2014/2023, CM APPL. 63337/2023 & CM APPL.
63338/2023

LOIL OVERSEAS FOODS LTD. Petitioner

VS

MGR HOLDING. Respondent

Legislation:

Article 227 of the Constitution of India
Section 151, Code of Civil Procedure, 1908 (CPC)

Subject: Civil suit for ejectment and recovery of mesne profits. The petitioner sought permission to examine its sole witness in this case.

Headnotes:

Civil Suit – Permission to examine sole witness – Petitioner seeks permission to examine its sole witness in a civil suit for ejectment and recovery of mesne profits – Matter pending at the stage of defendant evidence – Petitioner willing to pay costs and seeks a final opportunity – Respondent agrees to one final opportunity subject to legal costs and strict terms – Petitioner permitted to lead evidence of sole witness on the specified date – Limited right to lead evidence granted with conditions – No infirmity found in the Trial Court's previous order – Petitioner bound to address final arguments after the conclusion of defendant evidence – Petition disposed of with directions. [Para 1-8]

Referred Cases: None.

Representing Advocates:

For the Petitioner: Mr. Gurtejpal Singh, Ms. Manmeet Kaur, Mr. Chandan Malav

For the Respondent: Mr. Arvind Bhatt, Mr. Asheesh Kumar Mishra, Ms. Ritika Choubey

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 03.08.2023 passed by the Additional District Judge-01, Patiala House Courts, New Delhi in CS No. 58362 of 2016 titled as '**MGR Holding Pvt. Ltd. Vs. Loil Overseas Foods Ltd.**', whereby the application under Section 151, Code of Civil Procedure, 1908 ('CPC') filed by the Petitioner herein was dismissed with cost of Rs. 5,000/- to be paid to New Delhi District Legal Services Authority ('**ND DLSA**').
 - 1.1. The Petitioner herein is the original defendant and the Respondent herein is the original plaintiff before the Trial Court.
 - 1.2. The Civil Suit has been filed by the Respondent for ejectment and recovery of mesne profits against the Petitioner.
2. The learned counsel for the Petitioner states that the Petitioner seeks limited permission to examine its sole witness Mr. Balbir Singh Uppal on his existing affidavit which stands filed on record in the aforesaid Civil Suit.
 - 2.1. He states on instructions that except the said witness no other witness is to be led by the Petitioner.
 - 2.2. He states that the Petitioner is conscious of the delay caused in the proceedings due to the non-leading of the defendant evidence (DE) and seeks a final opportunity. He states that Petitioner is willing to pay costs of Rs. 2,50,000/- to the Respondent.
3. The learned counsel for the Respondent states that as is evident from the record of the aforesaid Civil Suit, the matter has remained pending at the stage of DE since 29.03.2019. He states that on an earlier occasion as well the DE was closed by the Trial Court vide order dated 27.07.2022 and on a similar plea of the Petitioner, the Trial Court re-opened the right to lead DE by way of last opportunity however, the defendant failed to avail the said last opportunity granted by the Trial Court thereafter on 31.01.2023.
 - 3.1. He states that without prejudice to his rights and contentions to test the bonafide of the Petitioner, he may be given one (1) final opportunity subject to legal costs and strict terms.
4. Accordingly, with the consent of the parties, the Petitioner is permitted to lead evidence of the sole defendant witness Sh. Balbir Singh Uppal on 11.12.2023 on the following terms.
 - 4.1. The Petitioner will pay costs of Rs. 2,50,000/- to the Respondent on 08.12.2023 before the Trial Court.
 - 4.2. Subject to payment of costs, the Petitioner will be entitled to examine its sole witness Sh. Balbir Singh Uppal on 11.12.2023. The said dated has been fixed as per the convenience of the parties and the witness.

- 4.3. In case the date of 11.12.2023 is not convenient to the Trial Court then the said witness will remain present on the date fixed by the Trial Court, as per its calendar.
- 4.4. The Petitioner will not seek any adjournment, on account of the inconvenience of the witness and shall ensure that the examination and cross-examination of the witness is concluded on the date(s) fixed by the Trial Court.
- 4.5. The Petitioner has been granted a limited right to lead evidence of Sh. Balbir Singh Uppal only and under the garb of this opportunity no additional document or additional evidence will be led by the Petitioner. 5. It is made clear that this Court finds no infirmity in the order of the Trial Court dated 03.08.2023, which is correct in facts and law; and if the Petitioner herein fails to lead evidence as per the terms set out in this order, then this opportunity shall stand forfeited and the orders of the Trial Court dated 27.10.2022 and 03.08.2023 shall become operative.
6. The Petitioner has undertaken that after the conclusion of the DE, the Petitioner will be ready to address final arguments. The said statement is taken on record and he is bound down to the same.
7. With the aforesaid direction, the petition stands disposed of along with the pending applications.
8. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

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