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

% ***Date of Decision: 18th March, 2025***

\+ CM(M) 508/2025 & CM APPL. 15695-15696/2025

AKHIL GUPTA .....Petitioner

Through: Mr. Rohit Goswami with Mr. Naman Mitra and Mr. Himanshu Sharma, Advocates.

versus

M/S OPS ENTERPRISES PVT. LTD. .....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

1. Petitioner is defending a suit for recovery.

2. He is aggrieved by order dated 13.01.2025 whereby his application moved under Order XVIII Rule 17 CPC has been dismissed by the learned Trial Court.

3. The above said civil Suit was filed by M/s OPS Enterprises Pvt. Ltd. through its authorized representative Ms. Tannu Goyal. According to plaintiff, the defendant (petitioner herein) had purchased cloth goods on credit and there was outstanding of Rs. 1,12,421/-.

4. After completion of pleadings and framing of issues, the plaintiff Company examined Mr. Naresh Kumar Agarwal (PW-1), its Director/Authorized representative. He was cross examined and discharged on 30.01.2023**.**

5. The case was thereafter fixed for defendant's evidence.

6. Defendant moved the above said application under Order XVIII Rule 17 CPC seeking permission to further cross examine PW-1. It was contended that the previous counsel had failed to put forward the defence of the

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defendant and substantive questions were not put during such cross-examination and, therefore, the permission was sought to call him for further cross examination.

7. The learned Trial Court dismissed the above said application while observing as under:-

> *"As per record, PW-1 was cross examined and discharged on 30.01.2023 and the matter is at the stage of DE since then. The defendant has failed to point out as to what facts have come into existence during cross examination of PW-1 on which the defendant intends to further cross examine PW-1. It is also not the case that such facts have came into existence after the cross examination of PW-1. . Moreover, simply because certain question were not put in the cross examination earlier by the defendant despite opportunity, the defendant cannot be now given an opportunity to cross examine PW-1 further. Further, it is further seen that the present application has been filed after more than 1.5 years of closing of PE.*
>
> *In view of the above discussion, application U/O 18 Rule 17 CPC moved on behalf of the defendant is dismissed."*

8. Admittedly, the testimony of PW-1 was completed on 30.01.2023 and, thereafter, the matter was adjourned and fixed for evidence of defendants. In case, certain relevant questions were not put by the learned counsel for the defendant, ideally speaking, the application should have been moved swiftly but there is unexplained delay in filing the above said application. The application was field only on 28.08.2024 whereas the cross examination was concluded lastly on 30.01.2023.

9. During course of arguments, learned counsel for the petitioner submitted that, in the interregnum, there was no progress in the civil suit as, on most of the occasions, the case could not be taken up as the learned Presiding Officer happened to be on leave.

10. However, such fact would not mean that the petitioner was in no

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position to, even, move an application.

11. According to learned counsel for petitioner, there was change of the counsel and once the new counsel took over the matter on 11.12.2023, it was noticed that certain relevant questions, pertaining to authorisation in favour of Ms. Tannu Goyal had not been put.

12. It is contended that it was in the above said backdrop that the petitioner was compelled to file the above said application.

13. However, merely because there is a change in the counsel would not *ipso facto* mean that any trial has to be started *de novo*. The power provided under order XVIII Rule 17 CPC can either be invoked *suo moto* by the Court or can be exercised at the instance of any of the parties but it is also settled position of law that such power has to be exercised sparingly in appropriate situation and it cannot be exercised in a routine manner.

14. The main purpose of the above said provision is to enable the Court to clarify any doubts which it may have with regard to the evidence led by the parties and such provision is never intended to be used to fill up omission and lacuna appearing in the evidence of a witness, who has already been examined.

15. This Court is also conscious of the limited scope of appreciation and judicial interference in such type of petition under Article 227 of the Constitution of India.

16. As per, *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*, the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in

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law. Reference be also made to *Estralla Rubber v. Dass Estate (P) Ltd.: (2001) 8 SCC 97; Garment Craft vs. Prakash Chand Goel: (2022) 4 SCC 181 and Ibrat Faizan v. Omaxe Buildhome Private Limited: (2023) 11 SCC 594.*

17. In view of foregoing discussion, this Court does not feel persuaded to interfere with the impugned order.

18. Resultantly, the petition is dismissed.

19. Pending applications, if any, also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 18, 2025/*sw/js*

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