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

% ***Date of Decision: 19th May, 2025***

+ CM(M) 919/2025 & CM APPL. 30176/2025

SANJAY GOEL

.....Petitioner

Through: Mr. Mayank Wadhwa, Mr. Shorya Goel, Mr. Digvijay Singh and Ms. Muskan Gupta, Advocates.

versus

SAG INFRASTRUCTURE DEVELOPERS PVT LTD & ANR.

.....Respondent

Through: Mr. Himanshu Sachdeva and Mr. Shantanu Garg, Advocates for R-1.

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. When the case was at the stage of defendant's evidence, defendant No.1 Mr. Sanjay Goel entered into witness box on 18.09.2024, and he was partly cross-examined and his further cross-examination was deferred for 19.09.2024.
3. On 19.09.2024, said witness appeared again.
4. There was one more official witness from *Kotak Mahindra Bank* and the order sheet of 19.09.2024 would indicate that both the witnesses were examined and discharged and the case was fixed for 09.01.2025 for remaining DE.
5. The grievance of the defendant is limited to the effect that on 09.01.2025 when the plaintiffs appeared before the learned Trial Court they



apprised the Court that the abovesaid witness Mr. Sanjay Goel (D1W1) was still under cross-examination.

6. The learned Trial Court, however, noticing the proceedings dated 19.09.2024, asked them to move appropriate application in this regard.

7. The plaintiffs accordingly moved an application under Order XVIII Rule 17 read with Section 151 CPC seeking recall of the abovesaid witness. In their application also, they mentioned that the cross-examination had not been concluded that day on account of paucity of time and that it was to be continued on the next date of hearing.

8. The learned Trial Court vide order dated 18.03.2025, while keeping in mind the totality of the facts and in the larger interest of justice, has allowed such application.

9. Such order is under challenge.

10. Mr. Wadhwa, learned counsel for the petitioner/defendant submits that the examination had been concluded already and it becomes amply clear, not only from the evidence sheet, but also from the order passed by the learned Trial Court. Therefore, without assigning any reason, much less a cogent one, the learned Trial Court should not have allowed the application. He submits that such order is not sustainable therefore.

11. Learned counsel for respondent/plaintiff submits that they were, all along, under the impression that the cross-examination had been deferred, and the moment they realised the same, they made prayer in this regard before the learned Trial Court on 09.01.2025 and in terms of the liberty granted by the learned Trial Court, application was also moved seeking recall of said witness.

12. Obviously, the order-sheet and the evidence-sheet would clearly



indicate that the cross-examination was concluded, else it would have been certainly recorded therein that the further examination was being deferred.

13. Fact remains that the sole contention coming from the side of the petitioner is that there is no reason assigned by the defendant in their application moved under Order XVIII Rule 17 CPC. He strongly relies upon *Shashi Sehdev vs. Narender Kumar Sharma: 2022 SCC OnLine Del 3687* and submits that any such application could have been allowed within the confines and ambit of said provision.

14. Para 13 of said judgment reads as under:-

“13. The resultant legal position is that, whether under Order XVIII Rule 17 or Order XVIII Rule 17 read with Section 151 of the CPC, a party may be permitted to recall a witness for further examination or cross examination if (i) there exists any doubt, remaining after the recording of the evidence of the said witness that has already taken place, which is required to be clarified or (ii) after the evidence of the witness has been recorded, the party seeking recall has come across evidence on which he could not lay his hands earlier, or (iii) evidence in regard to the conduct or action of the other party has come into existence.”

15. Admittedly, the witness is not being summoned for seeking any clarification and it is also not a case where the plaintiff has come across any further material or evidence and wants to confront the witness with such piece of evidence.

16. However, at the same time, this Court is also conscious of the stand taken by the plaintiff who, somehow, was under the impression that the cross-examination has not been closed by the learned Trial Court and that the same had been deferred.

17. Undoubtedly, the orders of the Courts are uploaded and are available on the website of the District Courts and, therefore, order dated 19.09.2024



must have also been immediately uploaded on the website.

18. A bare perusal of the abovesaid order would indicate that D1W1 was further cross-examined and discharged. It does not indicate that cross-examination had been deferred and, therefore, ideally speaking, the plaintiff should not have waited for the next fixed date of 09.01.2025.

19. Additionally, if he was having any reservation or uncertainty in this regard, he should have inspected the file and should have moved application under appropriate provision seeking recall of the witness, without there being any further delay in the matter.

20. The impugned order dated 18.03.2025 would, however, indicate that the application has been allowed by the same learned Presiding Officer and, therefore, keeping in the mind the overall facts of the case, this Court is not inclined to interfere with the matter, particularly when the case is already at an advanced stage and the statements of other witnesses of the defendants are to be recorded.

21. After hearing arguments for some time, learned counsel for petitioner submits that, if the Court had permitted such recalling, the Court should have at least burdened the other side with some cost.

22. Learned counsel for respondent/plaintiff does admit that he should have moved the application without any delay and he submits that he is ready to bear cost in this regard. He also submits that it will be ensured that further cross-examination is concluded same day and would not, in all probabilities, go beyond one hour.

23. Keeping in mind overall facts of the case and the abovesaid statements made by the learned counsel for the parties, the present petition is disposed of with the direction that on the next date 26.07.2025, the defendant-Mr Sanjay



Goel would appear before the Court for the purposes for his further cross-examination.

24. The plaintiff would be permitted to cross-examine said witness and such cross-examination be concluded same day, preferably within maximum one hour.

25. Simultaneously for causing delay in the matter, the plaintiff is burdened with cost of Rs.15,000/- which shall be payable to said witness on said date of hearing.

26. The petition is disposed of in aforesaid terms.

27. The pending application also stands disposed of in aforesaid terms.

MANOJ JAIN, J

MAY 19, 2025/ss/pb