

**(2014) 12 DEL CK 0053**  
**Delhi High Court**  
**Case No:** CM (M) 1067/2014

Spearhead Digital Studio Pvt.  
Ltd.

APPELLANT

Vs

H.K. Mitroo

RESPONDENT

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**Date of Decision:** Dec. 3, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 1, Order 11 Rule 12, Order 11 Rule 14, Order 11 Rule 16, Order 14 Rule 5
- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** Valmiki J. Mehta, J

**Bench:** Single Bench

**Advocate:** P.S. Bindra, Advocate for the Appellant; Z. Duggal and Party-in-person,  
Advocate for the Respondent

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**Judgement**

Valmiki J Mehta, J.

Caveat No. 1073/2014

1. Counsel appears for the caveator and thus the caveat stands discharged.

C.M.(M) No. 1067/2014 and C.M. Nos. 19879-80/2014

2. This petition under Article 227 of the Constitution of India is filed by the petitioner-company, who is defendant in the suit, impugning the order dated 7.10.2014 by which right of the petitioner/defendant to cross-examine PW-1 was closed. The subsequent paragraphs of this judgment will show that how tenants in Delhi who are occupying the valuable properties, by hook or by crook keep on continuing and dragging the litigation thus causing grave harassment and prejudice to the landlords and the landlord in this case being today a senior citizen of around 70 years of age.

3. The subject suit is a suit filed by the respondent/plaintiff/landlord against the petitioner/defendant-company/tenant. The suit was filed in the year 2011. In this suit, as per the counsel for the respondent/plaintiff, petitioner/defendant took up a defence that there was an oral agreement to sell, and in fact the petitioner/defendant had filed a suit for specific performance which I am informed by the counsel for the respondent, has been dismissed vide the judgment dated 17.4.2014 with costs of Rs.25,000/- passed by a learned Single Judge of this Court in the suit no.1280/2013 titled as M/s. Spearhead Digital Studio Pvt. Ltd. Vs. H.K. Mitroo. The subject property is bearing no.C-161, Okhla Industrial Area, Phase-I, New Delhi admeasuring 600 sq yds.

4. In the present/subject suit in which the impugned order has been passed the right of the petitioner/defendant to cross-examine PW1 was even closed earlier by the trial court vide order dated 30.4.2013. The orders of the trial court dated 22.4.2013 and 30.4.2013 read as under:-

"Orders dated 22.4.2013

22.04.2013

Present: Sh. Ketan Madan, Counsel for plaintiff with plaintiff.

Rajesh Duggal, MD of defendant company.

Sh. Rajesh Duggal seeks an adjournment as his counsel is stated to be busy in Tis Hazari Courts. This is a case of Sr. Citizen. Plaintiff had filed his affidavit of evidence on 28.03.2012. Thereafter defendant filed applications under Order 11 Rule 1 CPC and Order 11 Rule 12, 14 & 16 CPC which was dismissed on 06.11.2012. The said order clearly reveals that the applications were filed by the defendant to gain time. The matter was fixed up for PE for 08.01.2013. However, defendant engaged another counsel and at his request, the matter was adjourned to 01.02.2013 and this court specifically recorded that looking at the age of plaintiff matter would be taken on day to day basis. However, on 01.02.2013 defendant filed another application under Order 14 Rule 5 CPC which was dismissed vide order dated 02.04.2013. A perusal of the said order also reveals that the application was frivolous. Defendant has been only gaining time on one or the other pretext. Sh. Rajesh Duggal submits that the date was given while disposing of application under Order 14 Rule 5 CPC and convenience of his counsel was not sought. He is asked to call up his counsel and seek convenience for post lunch session. Looking at the age of plaintiff, this court is willing to record evidence even from 4 pm to 5 pm. Be kept waiting.

(Dr. Neera Bharihoke)

ADJ-1(South) Saket Courts

New Delhi/22.04.2013

At 12.30 PM

Present: Sh. Ketan Madan, Counsel for plaintiff with plaintiff.

None for defendant.

Be kept waiting for defendant.

(Dr. Neera Bharihoke)

ADJ-1(South) Saket Courts

New Delhi/22.04.2013

At 1.30 PM

Present: Sh. Ketan Madan, Counsel for plaintiff with plaintiff.

None for defendant.

To come up for PE on 26.04.2013 by way of last opportunity.

(Dr. Neera Bharihoke)

ADJ-1(South) Saket Courts

New Delhi/22.04.2013

At 2.00 PM

At this stage, Rajesh Duggal, MD of defendant company has appeared and he has been apprised about today's proceedings.

Put up on date fixed for purpose fixed.

(Dr. Neera Bharihoke)

ADJ-1(South) Saket Courts

New Delhi/22.04.2013

Order dated 30.4.2013

Present: Sh. Ketan Madan, Counsel for plaintiff with plaintiff.

Sh. Ashwani Kumar, proxy counsel for defendant.

Ld. proxy counsel for defendant submits that defendant has filed a money recovery suit against the plaintiff as well as has filed an application under Section 24 CPC and prays for a short adjournment. The issues in the present matter were framed as early as on 01.12.2011 and matter was listed for plaintiff's evidence for 19.01.2012. Thereafter because of filing of different applications by defendant evidence could not be recorded. Again the matter has been adjourned twice for PE. Today again adjournment is being sought. Plaintiff is a senior citizen and I find no reason to further adjourn the matter. The conduct of the defendant clearly reflects that it is

gaining time. Ld. counsel for defendant has been asked if he wishes to cross examine the plaintiff's witness. He prays for deferring the matter for a week.

In view of observations made herein, there is no reason for adjournment. Plaintiff has been examined in chief and discharged. Right to cross examine PW1 is closed.

To come up for further PE on 05.07.2013.

(Dr. Neera Bharihoke)

ADJ-1(South) Saket Courts

New Delhi/30.04.2013."

5. The petitioner after about eight months of passing of the order dated 30.4.2013 approached this Court under Article 227 of the Constitution of India and this Court only in the interest of justice and to avoid any injustice to the petitioner-company gave exactly one opportunity to the petitioner/defendant to cross-examine PW1 subject to payment of costs of Rs.20,000/- by passing the following order dated 28.1.2014:-

"The petitioner is aggrieved by an order dated 30.9.2013 whereby his right to cross examine PW-1 was closed. An application was moved for recall of other application which was also rejected on 30.9.2013, on the ground that adequate opportunities were granted to the petitioner to cross examine PW-1 in Court and that further delay would only cause harassment to the plaintiff, who was a senior citizen. Counsel for the petitioner submits that as of today only the plaintiff's evidence has been closed and the defendant's evidence have not started as yet. It is submitted that if PW-1 is not cross examined by the petitioners, severe prejudice would be caused. He submits that procedural law exists to subserve the interest of justice in all stages.

The trial court had felt that the plaintiff was delaying the matter, but the orders do not show whether the plaintiff was put to terms at any stage. Cost of Rs.2,000/- were imposed while closing the evidence on 30.9.2013.

This Court is of the opinion that the petitioner would be prejudiced if they are not permitted to cross examine PW-1. However, the petitioner cannot allow to interminably delay the proceedings. Counsel for the petitioner submits that he will take only one date to conclude the cross examination of PW-1. Accordingly, the Court is inclined to allow the petition subject to cost of Rs.20,000/- to be paid to the plaintiff by or before the next date of hearing before the Trial Court.

The Trial Court may fix a date for cross examination of PW-1 at its convenience on which date itself, the defendant/petitioner will complete the cross examination during the course of that day.

The petition is allowed in the above terms.

Copy of this order be given dasti under the signatures of the Court Master."

6. The order dated 28.1.2014 passed in C.M.(M) No. 86/2014 is very clear and the petitioner/defendant therefore had only and exactly one opportunity for cross-examining PW-1. Petitioner/defendant however did not utilize this opportunity inasmuch as it was prayed in the trial court on the date fixed for cross-examination of PW-1 that counsel for the petitioner was not available. In my opinion, counsel for the petitioner being not available is not a good ground to grant a further opportunity to the petitioner/defendant in the facts of this case inasmuch as even the earlier order passed by the learned Single Judge of this Court dated 28.1.2014 was only in the interest of justice. The petitioner/defendant as per the record is quite clearly guilty of malafidely delaying the disposal of the suit.

7. It is high time that to certain sections of litigants in this country, a very strong message be sent that use of the process of the law is not synonymous with the abuse of the process of the law. Courts of law are meant to redress the grievances but surely courts of law are not meant for abusing the process of the law. In view of the above, this petition being an abuse of the process of the law is dismissed with costs of Rs.1 lakh and payment of which costs of Rs.1 lakh to the respondent/plaintiff will be a condition precedent for the petitioner/defendant-company for continuing to pursue its defence in the trial court in the suit.