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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 67/2016

DEVENDER KUMAR GUPTA

..... Petitioner

Through Mr.Yogesh Swaroop, Advocate.

versus

MUKESH KUMAR

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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03.05.2016

CM(M) 67/2016 & C.M. No.2340/2016 (stay)

Petitioner is aggrieved by the order dated 07.12.2015 vide which his right to lead evidence which had already stood closed was endorsed by that subsequent impugned order.

Record shows that the present suit is a suit for recovery of money filed by the plaintiff against the defendant. On 15.7.2015 PW-1 was examined and discharged and he had been duly cross-examined by the defendant. Next date fixed was 07.9.2015. Contention of the petitioner/defendant is that he has wrongly noted the date as 17.9.2015 instead of 07.9.2015 which had led to this confusion. Accordingly, for this reason he was absent on 07.9.2015 on which date the evidence of the defendant stood closed. Petitioner, forthwith on learning of this development had moved an application

seeking recall of the order dated 07.9.2015 but after the pleadings had been completed in the application, the impugned order had declined the prayer made by the petitioner.

This Court is of the view that a value right would be lost in case the petitioner/defendant is not permitted to lead his defence. Impugned order is set aside. Petitioner is granted one opportunity to lead his evidence in defence; for that purpose only one witness shall be examined on his behalf. This Court notes that list of witnesses was not filed in the Trial Court. Affidavit by way of evidence on behalf of petitioner/defendant shall be filed within a period of two weeks from today with advance copy to the non-applicant who shall be informed of this development. DW-1 shall be present in Court on the next date to be fixed by the Trial Court for his cross-examination. This order is passed subject to payment of Rs.10,000/- as costs.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

MAY 03, 2016

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