

\$~33

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

+ CM(M) 16/2016

LALIT MOHAN GUPTA

..... Petitioner

Through: Mr.V.P.Rana, Advocate.

versus

DEVENDER KUMAR GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

08.01.2016

CM No.708/2016

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) No.16/2016 & CM No.707/2016

1. The petitioner is aggrieved by the order dated 16.11.2015 whereby the application filed by him under Section 151 CPC praying for recalling the order dated 20.08.2015 closing the evidence of the petitioner, has been dismissed.
2. Learned counsel for the petitioner submits that due to wrong noting of date as 21.08.2015 instead of 20.08.2015, the petitioner/plaintiff or the witness could not appear on the date fixed resulting in plaintiff's evidence being closed by learned Trial Court. He further submits that Sh.Navneet Singh, the attesting witness to the agreement is required to be examined

CM(M) 16/2016

Page 1 of 3

before the learned Trial Court for which one opportunity may be given by this Court.

3. Perusal of the record shows that on 21.05.2015 Sh.Sudhanshu Sikka, Advocate proxy counsel for the plaintiff appeared and sought adjournment. No witness was present in the Court on that date. The learned Trial Court adjourned the case for 20.08.2015 granting last opportunity for entire plaintiff's evidence **with direction to supply advance copy of the affidavit of the witnesses, who were to be examined, to be supplied to the respondent/defendant at least fifteen days prior to the next date of hearing.**

4. On 20.08.2015 since none appeared on behalf of the petitioner/plaintiff till 2.15 pm, plaintiff's evidence was closed and matter was adjourned for defendant's evidence for 15.10.2015.

5. It is not the case of the petitioner that affidavit of Sh.Navneet Singh was prepared and supplied fifteen days prior to the next date of hearing even if it is calculated from the date 21.08.2015 - the alleged wrongly noted date. Not only that, on 21.08.2015 the inspection of the judicial record was not carried out. Even no application was filed before the learned Trial Court on 21.08.2015 or immediately thereafter, explaining the reason for non-appearance on 20.08.2015 alongwith the affidavit of Sh.Navneet Singh to the effect that he had attended the Court as witness on 21.08.2015. The petitioner/plaintiff was well aware that on 20.08.2015 it was the last opportunity for him to lead entire plaintiff's evidence. Despite that affidavit of none of the witnesses was prepared and furnished fifteen days in advance to the respondent/defendant, as directed by learned Trial Court vide order dated 21.05.2015.

6. Thought it has been contended before this Court that on 21.08.2015 the counsel for the petitioner/plaintiff alongwith witness Sh.Navneet Singh had appeared before the learned Trial Court but the application dated 30.09.2015 filed by the petitioner/plaintiff does not mention the presence of witness on that date. Even the said application is not supported with the affidavits of the witnesses who were alleged to be present on 21.08.2015 with their affidavits, which were to be tendered by way of examination-in-chief. Thus, the learned Trial Court had rightly declined the prayer of the petitioner/plaintiff to grant another opportunity to examine PWs.

7. The impugned order does not suffer from any illegality, infirmity or perversity warranting any interference by this Court in exercise of its power vested under Article 227 of the Constitution of India.

8. The petition is dismissed.

9. No costs.

CM No.707/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

JANUARY 08, 2016

‘st’