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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 51/2016

NEEL KAMAL (NOW DECEASED) THR LRS

..... Petitioner

Through Mr.Jawahar Chawla, Advocate.

versus

SADANAND (NOW DECEASED) THR LR

..... Respondent

Through Mr.Deepak Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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19.01.2016

C.M. No.1898/2016 & C.M. No.1899/2016 (exemption)

Exemption is allowed subject to just exceptions. Applications disposed of.

CM(M) 51/2016 & C.M. No.1897/2016

Petitioner is aggrieved by the order dated 14.12.2015 vide which his application filed under Order XVI Rule 1 of the Code of Civil Procedure seeking permission to file his list of witnesses and to summon the said witnesses has been declined.

The petitioner is aggrieved by this order. Learned counsel for the petitioner submits that the evidence of the petitioner stood closed on 25.9.2014 and the matter stood adjourned to November, 2014 on which date he had moved the said application under Order XVI Rule 1 of the Code; reply to the said application was filed by the non-

applicant/plaintiff only in November, 2015 and thereafter the impugned order was passed on 14.12.2015. The petitioner had been granted only one opportunity to lead his evidence; the petitioner will suffer a severe prejudice in case he is not permitted to lead his evidence.

Needless to state that these arguments have been refuted. Learned counsel for the petitioner/non-applicant points out that this case has a chequered history and in fact relates back to the year 1995.

Record shows that the suit relates to the year 1995; it had been filed in the High Court and thereafter due to administrative changes, the suit had been transferred to the District Court. The submissions as pointed out by learned counsel for the petitioner about the date of clouser of the plaintiff's evidence and the date on which his application under Order XVI Rule 1 of the Code was filed are correct facts.

This Court has been informed that the case is now at the stage of final arguments and the next date fixed before the Trial Judge is today itself.

Learned counsel for the petitioner submits that he be granted permission only to lead three witnesses i.e. one official witness from the MTNL, one official witness from State Bank of India and one handwriting expert. Learned counsel for the plaintiff/non-applicant has opposed to the summoning of the third witness i.e. handwriting expert; his submission being that this will unduly delay the matter.

Noting the above contentions and counter contentions as also the fact that petitioner had been granted only one opportunity to lead his defense and in case he is not permitted to lead his evidence he will suffer a severe prejudice. The prayer made in the application is accordingly

partly allowed.

The Trial Judge shall fix two dates consecutively on which dates the petitioner undertakes to produce his witnesses at his own responsibility i.e. one witness from the MTNL and one witness from State Bank of India and the report of the handwriting expert shall also be obtained and affidavit to the said effect shall be filed by the petitioner in advance before the date to be fixed by the Trial Judge; on the date to be fixed by the Trial Judge, the handwriting expert shall be summoned by the petitioner (at his own responsibility) for cross-examination by the plaintiff/non-applicant. The Trial Judge shall fix the dates as per his diary. The Trial Judge shall ensure that this order is complied with within an outer limit of two months from today.

With these directions petition is disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

JANUARY 19, 2016

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