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

+ CM(M) 54/2016

AZAD SINGH

..... Petitioner

Through Mr. Brahmanand Gupta, ADv

versus

REENA & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.01.2016**

C.M. No.1944/2016 & C.M. No.1945/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Applications disposed of.

CM(M) 54/2016

Arguments have been heard. Record has been perused.

There are three orders which have been impugned before this Court but the grievance of the petitioner is largely on the order dated 21.11.2015. The other orders which have been impugned are the orders dated 03.12.2015 and 04.12.2015.

This is an unfortunate dispute between the two warring brothers. Record of the Trial Court shows that the Trial Court was constrained primarily for the reason that were directions of the High Court for the suit has to be decided in a time bound manner and the judgment has to be delivered by 16.02.2016 and accordingly the matter was taken up on a day to day basis. This was largely the reason why directions were being given at short intervals.

In the order dated 21.11.2015, the Trial Judge had noted that after the evidence of the three witnesses on behalf of the plaintiff is completed, the witnesses at Sr. No. 5 to 7 who are private witnesses will be produced by the plaintiff at his own cost and he is at liberty to produce the said witnesses. The names of the witnesses at Sr. No. 5 to 7 have been perused. Admittedly the affidavit of only one witness i.e at Sr. No. 7 i.e. Jai Kishan had been filed by the petitioner before the Trial Judge on 03.12.2015 on which date the evidence of the plaintiff was still in progress; it was on that date that the evidence of the plaintiff stool closed after his cross-examination.

Liberty had been granted by the Trial Judge himself to produce the witnesses at Sr. No. 5 to 7 after the evidence of PW-1 to PW-3 was over. The Trial Judge had however refused to take on record the affidavit by way of evidence of Jai Kishan as it was an unattested affidavit. The submission on this count of the learned counsel for the petitioner is that Jai Kishan who is his friend and is an important witness for the petitioner (he was the attesting witness to the GPA and Will the documents upon which the plaintiff is placing reliance) had gone to attend a marriage and for this reason, the affidavit could not be attested. His submission that he could produce the witness on the next date but this was declined by the Trial Judge and the order seeking review of the order dated 03.12.2015 was thereafter dismissed vide its subsequent order dated 04.12.2015.

Noting the above factual matrix and the information given to this Court that the next date fixed before the Trial Court is today itself, the petitioner is granted permission to produce evidence of Jai Kishan. It has been informed that the attested affidavit of Jai Kishan is already on

record and had been placed before the Trial Judge on 04.12.2015 itself. The said affidavit shall be considered by the Trial Judge in accordance with law and the said witness shall be produced by the petitioner on the date to be fixed by the Trial Judge for his cross-examination.

With these directions, this petition is disposed of.

INDERMEET KAUR, J

JANUARY 19, 2016

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