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

+ CM(M) 96/2016

MOHD YUNUS & ANR

..... Petitioners

Through Mohd. Noor Ul Islam, Adv.

versus

MOHD JAMIL & ORS

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **29.01.2016**

C.M. No.3265/2016 & C.M. No.3264/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Applications disposed of.

CM(M) 96/2016 & C.M. No.3263/2016 (stay)

The order impugned before this Court is the order dated 11.12.2015 vide which the application filed by the petitioners seeking review of the earlier order dated 03.09.2014 had been dismissed.

Record shows that the petitioners before this Court were the respondents in the Trial Court. The eviction petition had been filed by the petitioners against them. After the pleadings had been completed, issues were framed and the evidence of the petitioners stood closed on 30.08.2013. Matter was adjourned for evidence of the respondents time and again but adjournments were sought. This is clear from the order dated 31.10.2013. Matter was adjourned to 09.01.2014, 12.03.2014 and 17.04.2014. On 27.05.2014 again adjournment was sought by the

respondents as respondent No.2 was not present for his evidence. Cost of Rs.2,000/- was imposed. On 03.09.2014, the respondents' evidence was closed. Matter was fixed for final arguments. This was on 24.09.2014. On 12.12.2014, an application seeking review of the earlier order dated 03.09.2014 vide which the evidence of the respondents was closed was filed. Matter was listed for consideration time and again and the arguments were finally re-listed on 11.12.2015 on which date the first impugned order was passed.

The learned Trial Court had rightly noted that the respondents were seeking a recall of the earlier order vide which their evidence stood closed on the ground that respondent No.2 was a diabetic and was not in a position to walk or stand but there is not a single document filed in support of this averment. Even before this Court, this fact stands candidly admitted. It was in this background that the application seeking review of the earlier order dated 03.09.2014 was dismissed.

It is only today before this Court that certain medical documents are purported to have been filed which were admittedly not before the Trial Court at the time when the first impugned dated 03.09.2014 and the subsequent order dated 11.12.2015 were passed. The Trial Court had rightly noted that no ground is made for recall of the earlier order vide which the right of the respondents to lead evidence stood closed as even as per their own submission, the documents in support of their submission that respondent No.2 could not lead evidence for 1- ½ years were not filed by them at the time when they moved the said application before the Trial Court; these documents had not seen the light of the day even when the second impugned order was passed vide which the

application filed by the petitioners seeking review of the earlier order dated 03.09.2014 had been dismissed.

In this background, the impugned order suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 29, 2016

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