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

+ **CM(M) 91/2016**

MERLIN EXIM PVT LTD Petitioner

Through Mr.Sonal Jain, Advocate.

Versus

M R A ASSOCIATES PVT LTD Respondent

Through Mr.Sumit Chander, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **01.02.2016**

C.M. No.3058/2016 (exemption)

C.M. No.3059/2016 (exemption)

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

CM(M) 91/2016& C.M. No3057/2016

Petitioner is aggrieved by two orders. The first order is dated 17.9.2015 and the second order is dated 03.12.2015. Vide order dated 03.12.2015 right of the petitioner/defendant to cross-examine witnesses of the plaintiff stood closed. His defence had been struck off. His submission is that a request had been made in the pre-noon hours and the request was to the effect that the matter should be taken up at 2.00 p.m. Counsel (appearing in this Court today) was busy in the High Court and

to substantiate this submission the order passed by a Coordinate Bench of this Court in which appearance of the counsel for the petitioner had been noted has been placed on record. This position is prima facie correct. Further submission is that in view of the request, the Trial Court was not required to have taken up the matter before 2.00 p.m. but it had taken up the matter at 12.30 p.m. wherein the right of the petitioner to cross-examine the witnesses of the plaintiff stood closed and his defence had been struck off.

Learned counsel for the non-applicant/plaintiff has opposed the prayer. His submission is that this was the second date on which this request had been made and the cost which had been imposed upon the defendant on earlier date was not also paid.

The present suit is a suit for recovery of Rs.13 lakhs. There is only one witness on behalf of the plaintiff. A valuable right would be lost to the petitioner/defendant in case he is not permitted to cross-examine the witness of the plaintiff and lead evidence in defence. Accordingly, while setting aside both the orders i.e. the order dated 17.9.2015 and 03.12.2015 (no alteration of the cost which had directed to be paid by the defendant), the petitioner is granted one opportunity to cross-examine PW-1. He is also permitted to lead his defence.

This Court has been informed that there are two witnesses who shall be produced by the petitioner in his defence.

This order is passed subject to payment of Rs.10,000/- as costs; out of which Rs.5000/- shall be deposited with the Delhi High Court Legal Services Committee and Rs.5000/- shall be paid to the learned counsel for the plaintiff.

Earlier cost of Rs.5000/- has been paid today.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 01, 2016/ndn