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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 190/2016
CAPTAIN AVINASH CHANDER MALHOTRA

..... Petitioner

Through Mr.Ashim Vachher, Advocate.

versus

BRACKNELL INVESTMENTS PRIVATE LIMITED

..... Respondent

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **24.02.2016**

C.M. N.6855/2016 (exemption)

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

CM(M) 190/2016 & C.M. No.6854/2016 (stay)

Order impugned before this Court is the order dated 11.01.2016 vide which the application filed by the petitioner (defendant in the Trial Court) seeking recall of the earlier order dated 22.12.2015 had been dismissed. Vide order dated 22.12.2015, adjournment sought by the counsel for the petitioner to cross-examine PW-1 had stood closed.

Learned counsel for the petitioner submits that this was the first date (22.12.2015) on which date PW-1 had appeared for his cross-examination and earlier there was every possibility of a negotiation for settlement. This submission of the learned counsel for the petitioner is

correct. Order sheets records that the parties were negotiating for a settlement but the same had not fructified. On 22.12.2015 right of the defendant to cross-examine PW-1 stood closed and on the very same date an application had been filed by the defendant seeking recall of the earlier order but the same had been declined by the second impugned order dated 11.01.2016.

The present suit is a suit for declaration and mandatory injunction. A valuable right would be lost to the defendant in case he is not permitted to cross-examine PW-1 who is stated to be sole witness of the plaintiff. Subject to payment of Rs.15,000/- as costs one opportunity is granted to the defendant to cross-examine PW-1. This Court has been informed that the next date before the Trial Court is 03.3.2016. Counsel for the petitioner-defendant undertakes to inform learned counsel for the plaintiff about the order passed today in order that PW-1 may be present in the Court for cross-examination. It is made clear that no further opportunity shall be granted to the defendant for this purpose as the apprehension as noted in the order that this is delaying tactic may be obviated.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

FEBRUARY 24, 2016

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