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

+ **FAO(OS) 47/2015**

MUSTAFA ALEEM SIDDIQI

..... Appellant

Represented by: Mr.A.P.S.Ahluwalia, Sr.Advocate
instructed by Mr.M.Qayamuddin,
Mr.M.Husain and Mr.S.S.Ahluwalia,
Advocates

versus

RASHEEDA SIDDIQI & ANR

..... Respondents

Represented by: Mr.Abhey Narula, Advocate with
Mr.Aniruddha Choudhury, Advocate
for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **15.03.2016**

CM No.8567/2016

Learned counsel for the respondents states that the application may be allowed. We do so. Order dated February 04, 2016 dismissing appeal for non-prosecution is recalled.

FAO (OS) No.47/2015

1. Learned counsel for the respondents states that he would not like to argue on the issue of the maintainability of the appeal.
2. We have heard learned counsel for the parties.
3. The appellant is defendant No.1. He is in litigation with his mother.
4. The mother, as plaintiff, commenced leading evidence in the

affirmative. She filed her affidavit by way of evidence which was to be treated as her examination-in-chief.

5. The appellant resorted to the strategy of lingering on the dispute. The apparent reason is his knowledge that due to age her mother keeps ill health and being a resident of United States of America she would be troubled if required repeatedly to travel to India.

6. To expedite recording of evidence, with consent of parties Local Commissioner was appointed. Date February 11, 2014 was notified. The mother travelled to India. Appellant's counsel moved an application for date to be changed. Learned Local Commissioner accommodated appellant's counsel and fixed 15th and 17th February, 2014 as the dates for the mother to be cross-examined.

7. The mother must have heard some talk by the appellant. The talk was that the appellant would manoeuvre an adjournment. She instructed her counsel to file an application in the Court with a prayer that the Local Commissioner be directed to punctually record evidence on February 15, 2014 and February 17, 2014. Advance copy of the application was served upon appellant's counsel. The mother's counsel additionally sent a communication through e-mail to learned counsel intimating that the application was listed before the Court the next day. Counsel did not appear. The said application was allowed with a direction that under no circumstances the learned Local Commissioner would adjourn the matter.

8. In spite thereof the appellant chose not to appear before the learned Local Commissioner to cross-examine the mother and the result was the right to cross-examine being closed.

9. The appellant filed an application praying that the witness i.e. his

mother be recalled for cross-examination. The application was filed after 212 days and was allowed to remain under objections for another 106 days. It was ultimately listed before the Court after 328 days from the date when right to cross-examine the mother was closed.

10. In view of the facts noted hereinabove impugned order dated January 14, 2015 suffers from no infirmity. Appellant has rightly been denied right to cross-examine his mother.

11. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 15, 2016
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