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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 363/2016**
USHA

..... Petitioner

Through Mr.Arun Nischal, Adv.

versus

RAMESH CHAND

..... Respondent

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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25.04.2016

C.M. No.14388/2016 (exemption)

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

CM(M) 363/2016

The petitioner (defendant in the Trial Court) is aggrieved by the order dated 19.02.2016 vide which his right to lead his evidence in defence stood closed.

Record shows that the present suit is a suit for possession filed by the plaintiff against the defendant. The plaintiff evidence stood closed on 06.01.2015 on which date the matter had been listed for evidence of the defendant. Record further shows that the defendant was being represented by a legal aid counsel. Submission before the Trial Court was that her lawyer was not attending her case properly

and this was informed to the petitioner who was at the mercy of her counsel. The conduct of the counsel for the defendant should not be penalized to the detriment of the interest of the defendant. The defendant evidence was thereafter closed in July, 2015 whereupon the present application on which the impugned order had been was filed seeking recall of the order but the Court had denied to do so. The Court had noted that there appears to be no complaint lodged against the legal aid counsel of the defendant thus had chosen not to believe the submission of the petitioner.

Be that as it may, noting the factual matrix of the case and the fact that a valuable right of the defendant would be lost in case the defendant is not allowed to lead her evidence as also the submission of the learned counsel for the petitioner that there is only one witness required to be examined on behalf of the defendant, subject to payment of Rs.2000/- as costs, the impugned order is set aside and the petitioner/defendant is permitted to lead her evidence. The affidavit by way of evidence of the sole witness of the defendant shall be filed within a period of 10 days from today with advance copy to the non-applicant/plaintiff. The said witness will be present before the Trial Court on the next date of hearing who shall permit the cross-examination of the said witness.

At this stage, this Court has been informed that the next date before the Trial Judge is 29.4.2016. There is no sufficient time for compliance of the order passed by this Court. Accordingly, the Trial Judge will adjourn the matter for one more date. No further adjournment shall be granted.

With these directions petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

APRIL 25, 2016

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