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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 472/2016**
PANKAJ BAJAJ

..... Petitioner

Through Mr. Vineet Chaudhary, Adv.
versus

HARIKANT TRIPATHI

..... Respondent

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **13.05.2016**

C.M. No.18297/2016

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 472/2016 & C.M. No.18296/2016 (stay)

The petitioner is aggrieved by the order dated 22.02.2016 vide which his application seeking a recall of the earlier order dated 29.07.2015 had been dismissed. Vide order dated 29.07.2015, the evidence of the plaintiff stood closed.

The petitioner before this Court is the defendant in the Trial Court. PW-2 had been cross-examined and discharged. PW-1 was under cross-examination but the Trial had correctly noted that inspite of several opportunities having been granted to the learned counsel for the defendant to cross-examine PW-1, PW-1 was not cross-examined. Cost had also been imposed upon the defendant/petitioner on that count.

Learned counsel for the petitioner submits that out of 11 adjourned dates (brought to the notice of this Court), on five dates, the

Presiding Officer was on leave and on three dates, there was lawyers' strike and admittedly on the other dates, time has been taken by the petitioner to file certain documents but in all fairness, this time had been taken by the petitioner to file documents which there thereafter been permitted to be taken on record without any demur qua the plaintiff. This submission is correct. However, this Court notes with pain that almost 1- ½ years have gone by and PW-1 has not been cross-examined although PW-1 was present every date of hearing for his cross-examination.

Keeping in view the submission of the petitioner that a valuable right of the petitioner would be lost in case he is not allowed to cross-examine PW-1 (plaintiff), subject to payment of costs of Rs.25,000/-, permission is granted. The impugned order is set aside. On the next date which is stated to be 03.06.2016, PW-1 shall be present in Court for his cross-examination by the petitioner. Learned counsel for the petitioner undertakes to inform the non-applicant/plaintiff directly as also through counsel about the aforementioned order which has been passed today in order PW-1 may be present for an effective cross-examination on the next date. The Trial Court shall not give any unnecessary adjournment.

With these directions, petition disposed of.

INDERMEET KAUR, J

MAY 13, 2016

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