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

+ CM(M) 451/2016

ASHOK MAGO

Through Mr.Sahil A. Garg Narwana,
Advocate.

..... Petitioner

versus

USHA GANDHI

Through Nemo.

..... Respondent

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **10.05.2016**

C.M.Nos.17478-77/2016 (exemption)

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

CM(M) 451/2016 & C.M. No.17476/2016 (stay)

Petitioner is aggrieved by the order dated 22.3.2016 vide which evidence of the defendant stood closed. One witness on behalf of the defendant had been examined. Contention is that there were three witnesses to be examined on behalf of the petitioner (defendant in the Trial Court) but the right of the defendant to produce further evidence was closed by the impugned order.

Present suit is a suit for permanent injunction. Evidence of the plaintiff was closed on 20.10.2015. Three ensuing dates took place before the impugned order was passed. On one date Presiding Officer was on leave; on the second date the defendant who had filed affidavit

by way of evidence of his witness (DW-1) had inadvertently was not able to produce the original record for which an adjournment had been granted and on the third date the impugned order was passed.

This Court notes that on 08.12.2015 after the affidavit by way of evidence of DW-1 had been filed counsel for the plaintiff sought time to cross-examine the witness. On the following day i.e. on 19.01.2016 Presiding Officer was on leave. It was on the next date i.e. on 24.02.2016 that the petitioner had inadvertently not produced the original documents for which the matter was again posted for 22.3.2016.

Noting the aforementioned order sheets and the explanation furnished by the learned counsel for the petitioner which is largely borne out from the record of the suit, this Court deems it expedient to set aside the impugned order. Petitioner is granted permission to examine his remaining two witnesses. Affidavit by way of evidence of the said two witnesses shall be filed within a period of 10 days from today with advance copy to the plaintiff/non-applicant. Petitioner also undertakes to produce both the witnesses on the next date for their cross-examination. No untoward adjournment shall be granted by the Trial Judge.

This order is passed subject to payment of Rs.7000/-.

Petition disposed of.

INDERMEET KAUR, J

MAY 10, 2016/ndn