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

+ CM(M) 518/2016

DIN DAYAL SHARMA & ORS.

..... Petitioners

Through Mr.K.P.Mani and Mr. B.P.Mishra and
Mr.Puneet Rastogi, Advocates.

versus

SURAT SINGH

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **24.05.2016**

C.M. No.20134/2016 (exemption)

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

CM(M) 518/2016 & C.M. No.20133/2016 (stay)

Petitioner is aggrieved by the two orders. The first order is dated 11.3.2016 and the second order is dated 02.5.2016. Vide order dated 11.3.2016 on which date the matter had been fixed for remaining evidence of the petitioner (PW-1 who had been examined-in-chief and cross-examined on several dates), the evidence of the petitioner stood closed. Learned counsel for the petitioner had made a request to the Court that since the petitioner was not well he was not in a position to attend the Court. The Trial Court was however of the view that several dates already having been granted to the petitioner and he not having availed of the same no further opportunity should be granted to him to lead his evidence and the evidence was closed. The following order dated 02.5.2016 had dealt with the application filed by the petitioner seeking a recall of the order dated 11.3.2016 and the application was dismissed. The petitioner is almost 80 years

of age. He had firstly been partly cross-examined on 24.7.2013; thereafter cross-examined on several dates i.e. on 19.3.2014, 8.8.2014, 10.9.2014 and 17.8.2015 but the cross-examination was yet not concluded on the date on which the impugned order had been passed. Although the Trial Court noted that the petitioner had taken several dates but the Trial Court had failed to note the fact that PW-1 is aged more than 80 years and is suffering from various ailments. Cross-examination of PW-1 on various dates (as noted supra) has been conducted. This Court notes that this is a suit for recovery of rent which has been filed by the plaintiff. The Trial Court had noted the facts correctly but the Trial Court has not acted wisely. Petitioner is granted liberty to lead his evidence and he shall be present in the Trial Court on the next date for his cross-examination. The Trial Court shall endeavour and in fact shall ensure that PW-1 shall be cross-examined and discharged on the next date noting the age of the petitioner as also the earlier dates on which he had already stands cross-examined coupled with the nature of the litigation. This order is passed subject to payment of Rs.5000/- as costs to be deposited with the Delhi High Court Legal Services Committee.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

MAY 24, 2016

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