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

+ CM(M) 820/2016

SERVESH SHARMA & ANR Petitioners
Through Mr. Shashwata pandey, Advocate.
versus
RAMESH CHAND SHARMA Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **24.08.2016**

CM No. 30797/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 820/2016 and CM No. 30796/2016 (stay)

1. Advance copy of the petition has been sent to the respondent by speed post on 17.08.2016. None is present for the respondent today.
2. By the present petition, the petitioner seeks to impugn the order dated 09.07.2016. By the said order, the trial court concluded the evidence of DW-1 Sh.Suresh Chand Sharma. Thereafter, the trial court noted the submission of the counsel for the petitioners/defendants that he would be moving an application for summoning certain witnesses. The trial court noted that the plaintiff's evidence was closed on 05.08.2011 and since then the matter is pending for defendants' evidence. It is also noted that certain applications in between have been moved by the defendants. However, noting that more than four effective opportunities were granted to complete the defendants' evidence, the right of the defendants to lead evidence was closed by the trial court, the suit being an old suit. The court also relied upon

some standing directions regarding old matters.

3. Learned counsel appearing for the petitioners has submitted that the matter is pending since 2007. Earlier also the respondent filed a suit in 2002 which was withdrawn in 2007. It is submitted that this is an old litigation. He also relies upon order the dated 28.04.2016. He submits that on that date no direction was passed to summon all the witnesses as per the list of witnesses filed by the defendant. He also submits that on the said date, namely, 09.07.2016 DW-1 was present. He has been examined and cross-examined on the said date. Hence, he submits that there is sufficient reason to permit the petitioners/defendants to summon witnesses.

4. In my opinion on 28.04.2016 the matter was merely adjourned to 07.07.2016 for defendants' evidence. It would not have been possible for the petitioners to know as to whether, if the witnesses were summoned, the court would be in a position to examine and cross-examine DW-1 and also the summoned witnesses.

5. Accordingly, the impugned order closing the evidence of the defendants/petitioners is set aside subject to payment of costs of Rs.10,000/-. The petitioners are granted one final opportunity to summon the witnesses as per the list of witnesses filed for the date to be fixed for their evidence. The petitioners will ensure service of summons on the witnesses sought to be summoned. No further opportunity will be granted to the petitioners for summoning the witnesses/evidence.

6. With the above observations, the present petition is disposed of.

JAYANT NATH, J

AUGUST 24, 2016/rb