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

+ CM(M) 851/2016

ASHOK MAGO

..... Petitioner

Through Mr. Sahil A. Garg Narwana and
Mr. Deevesh Chandel, Advocates.

versus

USHA GANDHI

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.08.2016

CM No. 31580-31581/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 851/2016 and CM No.31579/2016 (stay)

1. By the present petition, the petitioner impugns the order dated 08.08.2016 by which the evidence of the petitioner/defendant (before the trial court) was closed. The trial court noted the submissions of the petitioner that the defendant's witness is suffering from bad health and has to visit the hospital. The trial court noted that several opportunities have been granted to the petitioner to lead DE. The trial court noted that the cost imposed has also not been paid and closed the defendant's evidence.
2. Learned counsel for the petitioner, at the outset, submits that he has to complete cross-examination of only one witness i.e. DW-2 who has been

partly cross-examined on 31.05.2016. It is submitted that on that day cross-examination could not be concluded due to paucity of time. He submits that one final opportunity may be granted.

3. He submits that on 08.08.2016 the witness was not well. He relies upon the medical report of Sir Ganga Ram Hospital. Regarding costs, he submits that because a proxy counsel had appeared, the cost was not paid.

4. An advance copy of the petition has been sent to the respondent by speed post, but none is present for the respondent.

5. In my opinion, there is sufficient ground to permit the petitioner to complete cross-examination of DW-2. Record shows that on 31.05.2016 DW-2 was examined and cross-examined. Further cross-examination of DW-2 was deferred due to paucity of time. On 08.08.2016 the said witness was not well. One final opportunity is given to the petitioner to produce DW-2 for completion of cross-examination subject to payment of costs of Rs.3,000/-. The cost imposed today and as has been imposed by the trial court on 19.07.2016 shall be paid on or before the next date of hearing before the trial court. The trial court may fix a date for cross-examination of DW-2 on which date, no adjournment shall be granted to the petitioner.

6. Petition stands disposed of.

JAYANT NATH, J

AUGUST 30, 2016
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