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

+ **CM(M) 921/2016 & CM Nos.33832/2016 & 33833/2016**

SURENDER SINGH Petitioner
Through Mr.Udayan Jain, Mr.Amit Sehrawat
and Ms.Anju Thomas, Advs.

versus

JAGDISH CHANDER SHARMA & ORS Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **16.09.2016**

CM No.33833/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 921/2016 & CM No.33832/2016 (stay)

1. By the present petition the petitioner seeks to challenge the order dated 27.7.2016 by which the Defendant's Evidence was closed. The trial court noted that instead of filing a report of an expert and examining the witness today, the petitioner states that Shri Gurbaksh Singh may be allowed to take photographs of the original receipt dated 16.10.2000 and certain documents so that the petitioner can seek opinion of the handwriting expert. The trial court noted that on the last date adjournment was sought on the ground that the expert Shri Deepak Jain is unable to appear due to a death in his family and the matter was adjourned on that date and again an adjournment is being sought. Hence, defendant's Evidence was closed.

2. Learned counsel appearing for the petitioner has taken me through the orders dated 20.1.2016, 12.2.2016 & 10.5.2016 of the trial court to submit that the petitioner has not been taking unnecessary adjournments for leading

its evidence. He also points out that an application under Section 151 CPC had been filed before the trial court way back in September 2011 where it was prayed that the handwriting expert may be allowed to inspect the file alongwith the petitioner/defendant to take necessary photographs from the court file so that the expert can prepare its report and file it. He submits that despite pendency of the said application no order was passed and instead the trial court has closed the evidence of the petitioner.

3. An advance copy of this petition has been sent by Speed Post to the respondent. None is present on their behalf today.

4. There is merit in the contention of the petitioner. On 27.7.2016 the handwriting expert Shri Gurbaksh Singh was present. The application filed by the petitioner under section 151 CPC was also pending. At best, hence it would have been appropriate for the trial court to first deal with the application before proceeding with the matter. I may also add that other than taking an adjournment on the last date i.e. on 10.5.2016, the record does not show adjournment being sought for Defendant's Evidence in the immediate past. The order suffers from material irregularity. Accordingly, the impugned order dated 27.7.2016 is set aside. The trial court is requested to dispose of the application of the petitioner under section 151 CPC and thereafter proceed with the evidence of the defendant/petitioner.

5. Petition stands disposed of.

6. A copy of this order be given Dasti under signatures of the Court Master to counsel for the petitioner, as prayed.

JAYANT NATH, J

SEPTEMBER 16, 2016

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