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

+ CM(M) 1029/2016 & CM No.37750/2016

MOHAN LOHIA Petitioner
Through Mr.Pramod Gupta, Advocate

versus

CHAMELI DEVI Respondent
Through Mr.Anil Goel, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.10.2016**

1. By the present petition, the petitioner seeks to impugn the order dated 10.08.2016 and earlier order dated 27.04.2016.
2. The present suit is filed by the respondent for ejectment/recovery of possession, damages for use and occupation of the suit property in Wazirpur Industrial Area, New Delhi a shed admeasuring about 1272 sq.ft. On 27.04.2016 DW-1 was cross-examined and discharged. Statement of defendant was recorded that he closes his evidence and DE was closed.
3. The petitioner/defendant thereafter moved an application for review/recalling of order dated 27.04.2016. By the said application, the petitioner sought review/recalling of the order dated 27.04.2016 closing DE. It was stated that on 27.04.2016, the counsel for the petitioner was not available due to eye and stomach infection and her daughter was also unwell. Hence, the counsel had advised the petitioner to request the court for an adjournment. It is further stated that the petitioner had taken steps for

summoning the witness by filing process fee but somehow by mistake or confusion or communication gap, the summons for witness could not be issued. The petitioner wrongly made a statement closing his evidence.

4. The impugned order notes that the petitioner seeks to examine only two witnesses namely the witnesses from the electricity and pollution department to prove the alleged rent receipt relied upon by the petitioner and to show that the rent is below to Rs.3500/- claimed by the petitioner. The trial court, however disallowed the application noting that nothing had been stated by the learned counsel for the defendant as to why the DE was closed by the defendant when witnesses as per list of witness were required to be summoned by him. The trial court concluded that there is no error apparent on the record and dismissed the application.

5. The learned counsel for the respondent at the outset submitted that the petitioner is resorting dilatory tactics and is prolonging the suit needlessly and is not paying even the so called admitted rent of Rs.2000/- though he submits that agreed rent between the parties is Rs.14,000/- per month.

6. It is matter of fact that the statement of the petitioner closing evidence was recorded in the absence of the counsel. There would be no reason to doubt the contention of the petitioner that he erroneously made the statement closing his defence due to absence of his lawyer.

7. Keeping in view the prejudice would be caused to the petitioner in case his evidence is not permitted to be recorded, subject to the petitioner tendering to the respondent agreed rent as per the petitioner which is Rs.2000/- per month w.e.f. March, 2010 till date, the petitioner is given one final opportunity to examine the witnesses, namely the two witnesses from the electricity and pollution department. Unpaid arrears of rent would be

paid within a period of three weeks from today. The respondent may accept the rent without prejudice to his rights and contention including his contention that the agreed rent is Rs.14,000/- per month. The petitioner shall ensure the summons be served on the two witnesses for the date so fixed by the trial court. No adjournment shall be granted to the petitioner. The petition stands disposed of. All the pending applications stand disposed of.

8. The matter be listed before the trial court on 26.10.2016 to fix appropriate date for recording the evidence of the petitioner.

JAYANT NATH, J.

OCTOBER 17, 2016/v