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

+ CM(M) 993/2016 & CM Nos.36308-36309/2016

MAQSOOD AHMAD Petitioner
Through Mr.Ashok Gurnani, Adv.

versus

NASEEMA PARVEEN & ANR Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.09.2016

1. By the present petition the petitioner seeks to impugn the order dated 29.3.2016 by which an application filed by the petitioner for permission to cross-examine PW-1 and PW-2 was dismissed.
2. The background facts are that the matters were listed on 13.7.2015. The two witnesses PW-1 and PW-2 were examined and their cross-examination was deferred as it was urged before the court that learned counsel for the defendant No.1/petitioner was not well. The trial court deferred cross-examination subject to production of medical record of the learned counsel.
3. On 10.08.2015 two witnesses were present and were cross-examined by defendant No.2. However, as the medical record of learned counsel for defendant No.1/petitioner was not filed the right of defendant No.1 to cross-examine the PWs was closed. The petitioner thereafter moved an application under section 151 CPC stating that the learned counsel for the

petitioner could not appear on 13.7.2015 due to shooting up of diabetes, It was stated that the counsel takes ayurvedic/desi medicine at the time of shooting up of diabetes and on that date also he did the same and restored his health in two days. As no allopathic medicine was taken or no allopathic doctor was consulted there is no medical record.

4. The trial court by the impugned order noted that even if the counsel was being treated by Ayurvedic/desi medicine, he could have produced a certificate from the concerned medical practitioner under whom the counsel was under treatment. On account of non production of the certificate a wrong and inappropriate inference was drawn and the application was dismissed.

5. Advance copy of the petition has been sent by Speed Post to the respondent. None is present on their behalf.

6. In my opinion, the facts show that the petitioner has not been able to communicate his problem properly before the trial court. It often happens that a person /counsel may not be feeling well on account of various issues including diabetes, bad cold or on account of feeling feverish etc. In such situations normally one may not consult a medical practitioner inasmuch as adequate rest and proper medication may be the right remedy. However, this has not been properly communicated to the trial court and hence the impugned order has been passed.

7. Keeping in view the averment of the counsel for the petitioner, in my opinion, it would be in the interest of justice that the petitioners are granted one last opportunity to cross-examine PW-1 and PW-2 subject to payment of costs of Rs.5,000/-. The petition is accordingly allowed. All pending applications, if any, also stand disposed of accordingly. The petitioner would

be given one opportunity to cross-examine PW-1 and PW-2

JAYANT NATH, J

SEPTEMBER 30, 2016

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