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

+ CM(M) 1040/2016

NIRAJ SHARMA

..... Petitioner
Through Mr.Sudarshan Rajan & Mr.Arjun
Gadhore, Advocates

versus

HARVINDER SINGH

..... Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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17.10.2016

CM No. 38132-33/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 1040/2016 & CM No. 38131 (*stay*)

1. By the present petition, the petitioner seeks to impugn the order dated 03.09.2016 by which an application under Order 18 Rule 17 CPC filed on behalf of the petitioner/defendants No.1 to 3 for recalling of witness PW-2 and PW-4 for cross-examination was dismissed.
2. The respondent has filed the present suit for possession. The evidence of the plaintiff/respondent- PW-4 was recorded on 14.05.2015.
3. The learned counsel appearing for the petitioner submits that he confines his prayer for permission to cross-examine PW-4 Sh.Harvinder Singh. He submits that the matter was listed on 14.05.2015 for evidence of PW-4. On that date itself, the evidence by way of affidavit was tendered and cross-examination of PW-4 was done by the other defendants. The learned

counsel for defendants No.1 to 3 did not cross-examine PW-4 and he sought discharged from the case and submitted that the petitioner would be engaging a new counsel who will come on the next date of hearing for cross-examination. Trial court, however on that date itself closed the right of the petitioner to cross-examine PW-4. He further submits that for cross-examination PW-4 the petitioner had only sought one opportunity on 14.05.2015 when the matter was pending before this court. Thereafter, the matter was transferred to the District Court where the present application has been filed and impugned order has been passed. He submits that only one opportunity may be granted to the petitioner to cross-examine PW-4. He relies upon the judgment of the Supreme Court in the case of **Ram Rati v. Mange Ram, 2016 SCC OnLine SC 249** to contend that the court has wide powers under Section 151 CPC to allow to recall a witness.

4. A perusal of the order sheet shows that on 14.05.2015 the evidence by way of affidavit of PW-4 Sh.Harvinder Singh was taken on record and he was cross-examined by the learned counsel for defendants No.4 and 5. In view of the submission of the learned counsel appearing for the petitioner that he seeks discharge from the case, the request for adjournment was declined and the right of the petitioner to cross-examine PW-4 was closed.

5. By the impugned order, the trial court dismissed the application under Order 18 Rule 17 CPC. The order appears to be made noting the adjournments sought by the petitioner to cross-examine PW-2. The trial court noted that the suit is pending for the last 12 years and the petitioner's evidence is in progress for the last more than 4 years.

6. Despite, advance copy of the petition has been sent to the respondent by ordinary process and speed post, none is present for the respondent.

7. PW-4 Sh.Harvinder Singh is the plaintiff in the suit and it is manifest that prejudice would be caused to the petitioner in case he is not permitted to cross-examine PW-4. Further, there is merit in the contention of the petitioner that for cross-examination of PW-4 only one adjournment was sought on 14.05.2015 which also was not granted.

8. In view of the above, the impugned order suffers from material irregularity as it causes injustice to the petitioner. The same is quashed. One final opportunity is granted to the petitioner to cross-examine PW-4 on a date to be fixed by the trial court. No adjournment shall be granted to the petitioner on the said date.

9. The petition stands disposed of. All the pending applications also stand disposed of.

10. A copy of this order be given *dasti* under the signature of the court master to the petitioner.

JAYANT NATH, J.

OCTOBER 17, 2016/v