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

+ CM(M) 1075/2016

RAJ KISHAN

Through Mr.Manmeet Singh Maini, Advocate
alongwith petitioner in person

..... Petitioner

versus

GEETA ANAND

Through None.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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24.10.2016

CM No. 39426/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 1075/2016 & CM No. 39424/2016 (*stay*)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 22.08.2016 by which the right of the petitioner to lead evidence was closed.

2. A perusal of the impugned order shows that on 27.04.2016 the matter was fixed for recording of the remaining defendants/petitioner's evidence subject to payment of cost of Rs.5,000/-. However, no other defendant witness was present on that date and the cost of Rs.5,000/- was also not paid in compliance of the present order. The trial court also closed the right of the petitioner. It noted that it is very old case pertaining to year 2010 and the evidence of DW-1 was already recorded on 18.12.2014.

3. The learned counsel appearing for the petitioner submits that on 22.08.2016 the petitioner was present in person alongwith three witnesses. Witnesses were sitting outside the court. None appeared for the respondent inside. He submits that the court has closed the evidence of the petitioner and has wrongly in the impugned order marked the presence of somebody appearing on behalf of the respondent. He further submits that a review petition was filed where the said submissions were made before the trial court, yet the trial court has dismissed the said review petition on 08.10.2016 without dealing with the submission made by the petitioner.

4. An advance copy of the petition has been served on the respondent despite that none is present on behalf of the respondent.

5. A perusal of the order dated 08.10.2016 shows that the trial court has noted the submissions of the petitioner that the defendant/petitioner's witnesses were sitting outside the court on 22.08.2016. Despite, this submission being made, the trial court has dismissed the review petition without dealing with the said submissions.

6. Though in the present petition, only the order dated 22.08.2016 has been challenged, in my opinion, remedy of the petitioner lies in filing of the review petition as it is argued that the order dated 22.08.2016 does not note the correct state of affairs. In the review petition the said submission was not dealt with and the review petition was dismissed.

7. In my opinion, the order dated 10.08.2016 does not deal with submission of the petitioner and suffers from error and irregularity. It is appropriate that the said order dated 08.10.2016 be set aside. The trial court is requested to hear review petition a fresh and pass appropriate orders.

8. With the above observation, the present petition is disposed of. All the pending applications are also disposed of.

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

JAYANT NATH, J.

OCTOBER 24, 2016/v