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

+ **CM(M) 1133/2016 & CM Nos.41929-41930/2016**

SUDESH OBEROI & ANR Petitioner
Through **Mr.Rajiv K.Garg and Ms.Kavita**
Rawat, Advocates

versus

RAJINDER KUMAR VERMA & ORS Respondent
Through **None**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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11.11.2016

CM No.41930/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 1133/2016 & CM Nos.41929/2016

1. Advance copy of the petition has been sent to the respondent by courier. None is present for the respondent.
2. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 10.12.2015 and 27.9.2016. By order dated 10.12.2015 the right of the petitioner/plaintiff to lead evidence was closed. The petitioner thereafter moved an application for review under Section 114 CPC which was dismissed on 27.9.2016. The petitioner has filed the present suit for declaration, cancellation of sale deed and permanent injunction.
3. On 10.12.2015 the trial court noted that despite several opportunities the petitioner has failed to lead evidence. The matter was fixed for evidence

on 9.12.2014, 3,7,2015 and 9.9.2015 and on the date of the impugned order i.e. 10.12.2015. The only steps taken by the petitioner was that an affidavit by way of evidence of plaintiff No.2 in the suit Mr.Neeraj Oberoi was filed on 15th December, 2014, copy of which was supplied to defendant No.3 in the suit in mid September 2015 and copy of which was never received by defendant No.2 in the suit. On that date also no witness of the petition was in attendance and previous costs imposed of Rs.10,000/- had not been paid. The trial court noted the submission of counsel for the petitioner that the witness had to go for marriage of a cousin. However, the request of the petitioner for adjournment was declined and evidence of the petitioner/plaintiff was closed.

4. By order dated 27.9.2016 the trial court dismissed the review application holding that there is no mistake nor any error apparent on the face of the record in order dated 10.12.2015.

5. Learned counsel appearing for the petitioner has submitted that there were compelling circumstances on account of which the witnesses who was to be cross-examined, namely, Shri Neeraj Oberoi was not present. He submits that on 9.9.2015 the said witness was suffering from Dengue. He relies upon a blood report from Delhi Diagnostics Centre to point out that the platelet count was down to 58,000. He further submits that on 10.12.2015 the said witness had to go out of town on account of a wedding in the family. The photocopy of the marriage invitation where functions were being held on 9th and 10th December, 2015 has been placed on record. He submits that these documents had been filed alongwith the Review Application but the trial court did not take notice of the same.

6. Learned counsel appearing for the petitioner submits that in the

interest of justice one last opportunity be granted to the petitioner to complete his evidence. He submits that only evidence of the first witness, namely, Shri Neeraj Oberoi and one witness from the concerned office of Sub-Registrar is to be led. He submits that no adjournment shall be taken by the petitioner on the dates fixed for the evidence of the petitioner.

7. In the interest of justice and also taking into account the explanation offered by the petitioner for not being able to lead evidence on two dates i.e. 9.9.2015 and 10.12.2015 one last opportunity is granted to the petitioner to complete the evidence of the said two witnesses subject to payment of costs of Rs.10,000/-. This cost would be in addition to the costs which were imposed by the trial court which also have not been paid. The unpaid costs of the trial court would also have to be paid.

8. In view of the above, the present petition stands disposed of. All pending applications also stand disposed of accordingly.

JAYANT NATH, J

NOVEMBER 11, 2016

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