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

+ CM(M) 1124/2016

M/S CITICORP FINANCE (INDIA) LTD Petitioner
Through Ms.Suruchi Suri, Advocate

versus

NARENDAR P MANGLA Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **08.11.2016**

CM No. 41509/2016(*exemption*)

Allowed subject to all just exceptions.

CM(M) 1124/2016 & CM No. 41508/2016(*stay*)

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 30.09.2016 by which an application filed for review of order dated 15.03.2015 was dismissed.
2. Despite service of advance copy of the petition on the respondent, none is present.
3. On 15.03.2016 the trial court had noted that an adjournment was sought by the proxy counsel on the ground that main counsel is not available. The trial court, however closed the petitioner's evidence.
4. The petitioner thereafter moved the present application where it was pointed out that the matter was listed on 15.03.2016 for cross-examination of the witness of the petitioner. Sh.Rohit Sablok, the witness of the

petitioner could not appear on the said date as he had to visit Jaipur where his sister stays with her in-laws. The mother-in-law of Sh.Rohit Sablok's sister was terminally ill and hence Sh.Rohit Sablok had to go and visit the sister and her family. The mother-in-law passed away on 20.03.2016 and that is the reason why Sh.Rohit Sablok could not be present before the court on 15.03.2016.

5. The trial court vide impugned order noted that there is much delay on the part of the petitioner and alongwith the application no documentary proof has been furnished regarding the absence of the witness, therefore, the application was dismissed.

6. Regarding the proof of reasons, the application is supported by an affidavit of the witness Sh.Rohit Sablok. He has stated on oath that the mother-in-law of his sister was expired on 20.03.2016, i.e. five days after the order dated 15.03.2016 closing the evidence of the petitioner was passed. A statement of this nature if made on oath would normally be sufficient to accept the authenticity of such a statement.

7. Regarding the delay it has been explained by the learned counsel for the petitioner that the same took place on account of the loss of original documents for which an FIR was registered.

8. In view of the above, it would be appropriate and in the interest of justice, that the petitioner be allowed to complete his evidence. Inconvenience caused to the respondent can be compensated in terms of costs.

9. Subject to payment of cost of Rs.7,500/-, the impugned order dated 30.09.2016 and order dated 15.03.2016 are set aside. The petitioner is granted last opportunity to complete his evidence without seeking any

adjournment in this regard on the date to be fixed by the trial court.

10. At this stage, the learned counsel for the petitioner submits that the witness Sh.Rohit Sablok has left the service of the company. Let the petitioner file an appropriate application for substitution of the witness within one week from today. If such an application is filed it may be dealt with as per law.

11. The present petition and all the pending applications are disposed of as above.

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

JAYANT NATH, J.

NOVEMBER 08, 2016/v