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

+ CM(M) 1203/2016

KAMLESH & ANR

..... Petitioner

Through Mr.Puran Chandra, Advocate

versus

DROPATI & ORS

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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02.12.2016

1. An advance copy of the petition has been sent to the respondents but none is present on their behalf.
2. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 4.11.2016 by which an application filed by the petitioners to permit cross-examination of PW-1 was dismissed.
3. On 16.7.2016 the trial court noted that PW-1 is present and his affidavit has been filed but despite repeated calls none has appeared for the petitioners/defendants No.3 and 4 in the suit. Accordingly, the trial court closed the P.E. and put the matter for defendant's evidence.
4. By impugned order dated 4.11.2016 the trial court while dealing with the application of the petitioner to permit cross-examination of PW1 wrongly noted that petitioners/defendants No.3 to 4 had been proceeded ex parte and their right to cross-examine PW was closed. In fact defendants

No.3 and 4 were not proceeded ex parte on 16.7.2016. The right to cross-examine PW-1 had been closed as none had appeared for the said party. A perusal of the impugned order also shows that the trial court had offered to the petitioner to cross-examine PW-1 on that date itself i.e. 4.11.2016. Counsel for the petitioner declined to do the same.

5. Learned counsel appearing for the petitioner submits that on the said date i.e. 4.11.2016 he could not cross-examine PW-1 as he had not been served with a copy of the affidavit by way of evidence of PW-1. He further submits that the counsel appearing for the petitioners was suffering from Asthma.

6. In the interest of justice, keeping in view the fact that the petitioners have been non- suited for their non appearance on 16.7.2016, I set aside the impugned order dated 4.11.2016 subject to costs of Rs.5,000/-. The petitioner shall be granted one last opportunity on a date to be fixed by the trial court for cross-examination of PW-1.

7. With the above, the present petition and pending applications stand disposed of.

JAYANT NATH, J

DECEMBER 02, 2016

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