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

+ CM(M) 1298/2016 & CM Nos.46493-94/2016

JAGDISH KUMAR ..... Petitioner  
Through Mr.Sunil Kumar Jha &  
Mr.A.K.Mishra, Advocates

Versus

SUBHASH CHANDER SACHDEVA ..... Respondent  
Through Mr.Nikhil Goel, Adv. for DDA

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **16.12.2016**

**CM No.46494/2016** (*exemption*)

Allowed subject to all just exceptions.

**CM(M) 1298/2016 & CM No.46493/2016** (*stay*)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 01.12.2016 by which it is stated that the right of the petitioner to cross-examine PW-1 was closed and observations made regarding the defence of the petitioner.
2. A perusal of the impugned order shows that the trial court has prima facie come to the conclusion that the property has been allotted by DDA on perpetual lease deed and the respondent is the lessee in the suit property. He being a lessee, has no right to transfer the said property to any body including the petitioner. Merely because of a family settlement is there, the property is not transferred to defendant No.1. Hence, it prima facie concluded that further cross-examination of PW-1 is not required. The trial court thereafter recorded the submission of the petitioner that he was likely

to go through the legal provisions and revert back to convince the court as to whether any cross-examination further is needed or not. The trial court fixed the matter for 16.12.2016 for argument on this aspect as to whether further cross-examination of PW-1 is required or not.

3. The learned counsel appearing for the petitioner relied upon an order dated 13.07.2016. He submits that earlier the right to cross-examine PW-1 was closed. By the said order dated 13.07.2016, opportunity was granted to the petitioner to cross-examine PW-1. He submits that the impugned order is contrary to this order that has already been passed. He also submits that family settlement cannot be negated in the manner at this stage without evidence/arguments being led by the parties. The learned counsel for the petitioner also submits that the court is likely to dispose of the petition based on this argument alone.

4. In my opinion, prima facie observations were made by the trial court in the order and the petitioner should accordingly raise all his submissions before the trial court who would obviously consider the said submissions and deal with the same as per law.

5. On 24.09.2011, the court has framed issues. Before disposing of the suit if it decides to do the same at this stage, I am sure that the trial court would give opportunities to the parties to make submissions on the issues.

6. With the above observations, the present petition stand disposed of. All the pending applications also stand disposed of.

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

**JAYANT NATH, J.**

**DECEMBER 16, 2016/v**