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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7389/2015

RUSTAM BEG (DECEASED) THR LRS

..... Petitioner

Through Mr. Rahul Srivastava, Advocate

versus

THE ESTATE OFFICER & ORS.

..... Respondents

Through None

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **05.12.2016**

W.P.(C) 7389/2015 and CM APPL. No. 13613/2015

Petitioner is aggrieved by the order passed by the learned District Judge dated 23.12.2014. This is an interim order passed by the learned District Judge in pending proceedings under section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. That appeal is yet pending before the learned District Judge and the next date fixed before him is 23.01.2017.

Petitioner has confined himself only to that part of the order where his right to cross examine two witnesses namely one Balbir Singh and K.C. Surinder had been denied to him. The statement of Sh. Balbir Singh, Deputy Director- Allotment (Slum & JJ Deptt. MCD) was recorded on oath on 02.02.2010 and statement of Shri K. C. Surinder, Deputy Director, Commercial Estate, DDA was recorded on the subsequent date i.e. 22.04.2010. Both these witnesses were not cross examined. Counsel for the petitioner submits that he was not permitted to do so. He had moved an application on 07.05.2010 (on

record) seeking permission of the Court to cross examine these witnesses. The impugned order had declined this prayer.

This Court is of the view that under provisions of Indian Evidence Act the statement of a witness which has been recorded on oath must be tested by cross examination. This is a right which has been prescribed by the Legislature. The Trial Court declining this right to the petitioner has committed an illegality. Even presuming that these witnesses were only formal in nature and do not affect the defence sought to be set up by the petitioner this Court is nevertheless of the view that the petitioner has a right to cross examine the said witnesses.

Accordingly, the said witnesses be summoned by the learned Trial Court for a date to be fixed for their cross examination. It is made clear that only one opportunity shall be granted to the petitioner for the said purpose as vehement contention of the non-applicant/respondent is that the petitioner is only trying to delay the proceedings. Trial Court shall not give any unnecessary adjournment in this regard.

Any other document which the petitioner chooses to rely may be applied under the provisions of Right to Information Act.

No further orders are called for.

Petition disposed of.

INDERMEET KAUR, J

DECEMBER 05, 2016

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