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

+ CM(M) 821/2015 & C.M. No.18273/2015

ASHA SRIVASTAVA & ANR

..... Petitioners

Through Ms.Sonali Malhotra, Advocate.

versus

BAL KISHAN MAGGON (SINCE DECEASED) THR HIS LRS

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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01.02.2016

Order impugned before this Court is the order dated 30.7.2015 vide which right of the plaintiff to lead evidence has stood closed.

The impugned order has recorded that more than three years had elapsed since the date of recording of the evidence of the plaintiff and evidence not having been led in this intervening period it was a fit case where the evidence of the plaintiff should be closed. Learned counsel for the petitioner submits that on 22.7.2015 i.e. one week before the impugned order, an application had been filed by the plaintiff before the concerned Court informing the Court that the witness who was to be led was engaged at Jamshedpur in relation to the admission process of her son and as such she would not be able to attend the Court on 30.7.2015. That application had sought postponement of the date of 30.07.2015. On 22.7.2015 itself the Court had without issuance of notice dismissed the application noting that this application was not supported by any

affidavit to support her plea. On 30.7.2015, the Court in continuation of its earlier order dated 22.7.2015 noting that no witness was present on behalf of the plaintiff had closed the evidence of the plaintiff. It is this order which has now been impugned before this Court.

The present suit is a suit for specific performance of the contract, possession and permanent injunction. This Court notes that in the orders dated 25.3.2014 up to 22.7.2015 affidavit of the plaintiff was on record and matter was being listed and relisted for the cross-examination of PW-1. On one pretext or the other which included the Court being on leave the matter was adjourned. Defendant had also taken an adjournment. Plaintiff had also taken an adjournment. On another occasion, at the joint of the parties the matter stood adjourned. Learned counsel for the petitioner submits that a valuable right would be lost to the petitioner in case she is not permitted to lead her evidence in the affirmative. There is only one witness which is to be examined. The affidavit of PW-1 was already on record and a categorical submission was made in writing informing the Court that on 30.7.2015 the plaintiff's witness would not be able for the reason as noted supra but the Trial Court without considering this plead of the plaintiff had summarily dismissed her application.

This Court notes these factual averments to be correct. This Court notes the submission of the petitioner that in the dates prior to the date when the impugned order was passed it was not only at the request of the plaintiff but it was at the defendant as also at the joint request of the parties that the matter was adjourned for cross-examination of PW-1. Next date fixed is 12.02.2016 when the matter is fixed listed for evidence

of the defendant.

Plaintiff has to prove her case in the affirmative. Needless to state that if a permission is not granted to the plaintiff to lead her evidence in affirmative it will be a loss upon her. Accordingly while setting aside the order dated 30.7.2015, permission is granted to PW-1 to enter the witness box for her cross-examination on the date to be fixed by the Trial Court after 12.02.2016. This order is passed subject to payment of Rs.5000/- as costs.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 01, 2016

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