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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1223/2015 & C.M. No.30317/2015

MAHABIR SINGH

..... Petitioner

Through

Mr.Vinod Sehrawat, Advocate.

versus

PREM RAJ

..... Respondent

Through

Mr.G.S.Chuahan, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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28.01.2016

Petitioner is aggrieved by the order dated 15.10.2015 vide which his application filed under Order XVIII Rule 17 of the Code of Civil Procedure had been dismissed. The petitioner (defendant before the Trial Court) had sought opportunity once again to cross-examine witnesses of the plaintiff and to examine his own witnesses in defence.

Needless to state that this prayer has been opposed.

Record shows that the petitioner has been taking opportunities from the Court without any justifiable cause. Issues were framed way back on 11.3.2014. Plaintiff evidence was closed on 21.5.2014 and the matter was listed for defendant evidence. On that date none had appeared for the defendant. That is why the opportunity to cross-examine the witnesses of the plaintiff stood closed. On the following day i.e. on 21.7.2014 matter was listed for evidence of the defendant. On that date an application had been filed seeking recall of the order dated 21.5.2014. Subject to payment of Rs.1500/- as costs the order dated 21.5.2014 had been set aside and the defendant had been granted permission to cross-examine the witnesses of the plaintiff.

The matter was fixed for 02.9.2014. On 02.9.2014 the witnesses of the plaintiff were not present. The matter renotified for 15.10.2014. The witnesses of the plaintiff were present on that date but the defendant had made a request for adjournment on the ground that his counsel was not well. Last and final opportunity had been granted to the defendant to cross-examine the witnesses of the plaintiff. On the following day i.e. on 29.10.2014 again counsel for the defendant was not available; witnesses of the plaintiff were present; opportunity to cross-examine the witnesses of the plaintiff thus stood closed on 29.10.2014. On 25.11.2014 again the counsel for the defendant was not available and a request was made by the defendant for adjournment. Matter was again renotified for defendant evidence. On the following date i.e. 06.01.2015 the defendant made a submission that he had changed his counsel. One more opportunity was sought by him to lead evidence in defence. Matter was renotified for 23.02.2015 for defendant evidence. On 23.02.2015 till 1.30 p.m. none had appeared for the defendant; accordingly, defendant evidence was closed and matter was renotified for 11.3.2015 for final arguments.

Record further discloses that on 10.4.2015 the defendant filed the present application seeking permission to cross-examine the witnesses of the plaintiff and to lead his evidence in defence. The Court had rightly noted that the conduct of the defendant was callous. The application was dismissed by the impugned order.

The present suit is a suit for specific performance of an agreement to sell vide which the plaintiff had paid a sum of Rs.1 lac

to the defendant which was the total consideration for the immovable property i.e. the property bearing plot no.186, admeasuring 200 sq. yards out of Khasra no.210/2 and 211 situated in the revenue estate of village Ghuman Hera, Delhi. Learned counsel for the petitioner/defendant submits that on merits he has a good case; the suit would be barred by limitation; a valuable right of the defendant would be lost in case he is not permitted to cross-examine the witnesses of the plaintiff and to lead his evidence in defence.

Noting the chequered history but “in the interest of justice” this Court while giving an expensive definition to the words “in the interest of justice” and subject to payment of Rs.25,000/- as costs one opportunity is granted to the petitioner to cross-examine the witnesses of the plaintiff. Learned counsel appearing for the respondent/plaintiff submits that the witnesses of the plaintiff will be present on the date to be fixed by the Trial Judge (after 01.02.2016 which is the next date fixed before the Trial Judge) for the cross-examination of the said witnesses of the plaintiff for which only one single date shall be granted to the petitioner/defendant. The petitioner/defendant shall be granted only one date to produce his evidence in defence. Needless to state that the affidavit of the sole defence witness of the defendant shall be filed in advance with advance copy to the plaintiff who may cross-examine the said witness on the date given.

With these directions, this petition is disposed of.

INDERMEET KAUR, J

JANUARY 28, 2016

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