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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 150/2016**
DEEP CHAND

..... Petitioner

Through Mr.Amit Dhalla, Advocate.

versus

PRAKASH CHAND & ORS

..... Respondents

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **16.02.2016**

C.M. No.5563/2016 (exemption)

1 Exemption is allowed subject to just exceptions. Application disposed of.

C.M. No.5562/2016 (for condonation of delay)

2 In view of the averments made in the application, the delay of 19 day in filing this petition is condoned. Application disposed of.

CM(M) 150/2016 & C.M. No.5561/2016 (stay)

3 Order impugned before this Court is the order dated 01.12.2015. The right of the defendant to lead further evidence had been closed on 14.10.2015 and vide the impugned order his application seeking a recall of that order had been declined; the matter was listed for arguments. In fact, on that date itself, the impugned order had recorded that part arguments were heard.

4 The present suit is a suit for possession and injunction. Petitioner before this Court is the defendant in the Trial Court. The impugned order reveals that DW-1 had been examined, cross-examined and discharged on 30.8.2015 and the next date fixed was 14.10.2015. The contention of the petitioner is that he had wrongly noted the date as 15.10.2015 and on 15.10.2015 when he had appeared before the concerned Court he learnt about the order which had been passed against him on 14.10.2015. The application filed on 15.10.2015 has been perused. The submission of the learned counsel for the petitioner that he had wrongly noted the date is borne out from the fact that on the very next date, the application was filed by the petitioner. His submission is that the mistake was bonafide appears to be evident. Trial Court had noted all the facts in the correct perspective but thereafter declined to pass any order in favour of the petitioner and not given him any further opportunity to summon his witnesses although as per record his list of witnesses is a part of the record and the list of witnesses is dated 01.7.2015. Trial Court had in fact also noted that in this intervening period an application was filed by the petitioner/defendant to summon his witnesses and diet money had also been deposited. All this reflects on the bonafides of the petitioner.

5 Accordingly, the impugned order is set aside. Opportunity is granted to the petitioner to summon his witnesses nos.3,4,5 and 6 of the list of witnesses dated 01.7.2015. Learned counsel for the petitioner submits that he does not wish to examine the son of the defendant who is at serial no.2.

- 6 This order is passed subject to payment of Rs.10,000/- as costs.
7. Petition disposed.
- 8 Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

FEBRUARY 16, 2016
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