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

+ CM(M) 122/2017

MEHA GARG

..... Petitioner

Through Mr.Pramod K.Sharma, Mr.Prashant
Bajaj and Ms.Ankita Vashisht, Advocates

versus

RELIANCE GENERAL INSURANCE CO LTD..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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31.01.2017

CM No.3877/2017

Exemption allowed, subject to all just exceptions.

CM(M) 122/2017 & CM No.3876/2017 (stay)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the orders dated 21.1.2017 and 15.12.2016 by which the right of the petitioner to lead evidence was closed.
2. It is the case of the petitioner that the issues were framed on 3.10.2016 and an affidavit by way of evidence of the plaintiff and her daughter Ms.Sugandha Garg were filed on the said date. However, when the matter was fixed for cross-examination on 2.11.2016, 2.12.2016 and 15.12.2016 the witnesses did not appear for cross-examination. Due to the same the trial court on 15.12.2016 closed the evidence of the petitioner.
3. An application filed under section 151 CPC for recalling the said order dated 15.12.2016 was also dismissed. The court noted the stand of the

petitioner that the counsels did not inform them that the dates are fixed for evidence. However, it noted that the plaintiff has herself filed the evidence by way of affidavit of herself and her daughter on 3.10.2016 and cannot say that she was not aware that the matters are fixed for evidence.

4. A perusal of the application filed by the petitioner to recall the order dated 15.12.2016 would show that there appears to be a communication gap between the petitioner and her counsel on account of which the witnesses have not appeared on the date when it was fixed for cross-examination.

5. An advance copy of the petition has been sent to the respondent, but none is present.

6. Keeping in view the averments in the application, in the interest of justice, a final opportunity is granted to the petitioner to lead her evidence subject to payment of costs of Rs.3,000/- already imposed by the trial court.

7. Accordingly orders dated 15.12.2016 and 21.1.2017 are quashed. One last opportunity is granted to the petitioner to lead her evidence on the date to be fixed by the trial court.

8. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 31, 2017

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