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

+ CM(M) 237/2017

SATISH KUMAR & ORS	 Petitioner
Through	Mr.Rajiv Dewan, Advocate
versus	
RAJ KUMARI & ANR	 Respondent
Through	

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 27.02.2017

CM No.7739/2017 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 237/2017 & CM No.7738/2017(stay)

1. By the present petition the petitioner seeks to impugn the order dated 8.12.2016 by which his right to lead further evidence was closed. The respondent has filed a suit for permanent and mandatory injunction and declaration. One of the grievance mentioned in the plaint filed by the respondent is that sons of the petitioners have got issued a driving license in which the name of Shri Tilak Raj i.e. the late husband of the respondent is shown as the father of the said petitioners No.1 and 2. Similar allegations are made regarding ration card.
2. The petitioner moved an application to summon the record in respect of ration purchased from Shop No.1366 Subhash Road, Gandhi Nagar,

Delhi. Summons in the application were issued on 3.10.2016.

3. The report of the summons sent came back showing that the shop is closed/vacated long back. The petitioner admitted that he had met the shop owner ten years back. Hence, the trial court came to the conclusion that the shop is closed and the record is not available and closed the evidence of the petitioner.

4. Learned counsel for the petitioner submits that the conclusion of the trial court that the record is not available merely because the ration shop is closed is an erroneous conclusion based on no facts. He submits that the record is bound to be available with the appropriate government and it cannot be said that the same is not available. He also submits that the said documents are necessary. He further submits that evidence of the last witness of the petitioner was going on.

5. Advance copy of the petition has been sent to the respondents. Learned counsel for the petitioner submits that advance copy has also been served on learned counsel for the respondent.

6. From a perusal of the impugned order it is not clear as to how the trial court came to the conclusion that the record is not available. In my opinion, this fact cannot be concluded merely from the fact that the ration shop is closed long back. It is clear that the petitioner should have been given an opportunity to summon the concerned government official to state about the availability or non-availability of the record. It is only thereafter that such a conclusion could have been arrived at. The impugned order suffers from material illegality. Same is accordingly quashed. The petitioner is free to take steps to summon the appropriate government official to bring the necessary record as above. It is clear that the record is quite old. Hence, only

one opportunity is being granted to the petitioner, in the interest of justice to summon the appropriate record/official.

7. Petition and all pending applications, if any, also stand disposed of.

JAYANT NATH, J

FEBRUARY 27, 2017

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