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

+ CM(M) 311/2017 and CM Nos. 10794-95/2017

IRSHAD AHMED

..... Petitioner

Through Mr. Shaad Anwar and Ms. Shabnam,
Advocates

versus

JAGAT TALKIES DISTRIBUTORS & ANR..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.04.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 16.01.2017 by which order his right to complete the evidence of DW-2-Mohd. Sabir was closed.
2. The respondents have filed the suit for recovery of possession, recovery of license fee and damages against the petitioner. It is averred that the petitioner has taken a shop on license basis from the respondent. As the license stands terminated, hence the present suit. One of the defences raised by the petitioner is that he is not a licensee but a tenant.
3. The trial court framed issues on 18.01.2014 but directed the petitioner/defendant to lead evidence first as the court noted that the dispute can be curtailed in case the petitioner/defendant is able to prove himself as a tenant in the suit property.
4. Advance copy of the petition has been sent through speed post on the counsel for the respondents. As per the statement given in the petition, the

learned counsel had refused to accept service in person. Despite this, the respondents have chosen not to appear before the court today.

5. I have heard learned counsel for the petitioner. He has submitted that the evidence of the witness DW-2 Mohd. Sabir is necessary to prove the issue of licensee/tenancy. He has also taken me through the order sheets including orders dated 05.10.2015, 02.12.2015, 13.01.2016, 09.03.2016, 26.04.2016, 11.07.2016, 10.08.2016, 30.09.2016, 04.11.2016 and the impugned order to submit that it is not a case where it can be said that the petitioner is deliberately delaying the matter. Adjournments have been taken by both the parties on different dates. Learned counsel for the petitioner submits that in case one opportunity is granted, he would like to complete the cross-examination of DW-2.

6. Keeping in view the averments of the petitioner, it would be in the interest of justice that the petitioner is given one last opportunity to produce DW-2 Mohd. Sabir for cross-examination on the date to be fixed by the trial court. This opportunity is subject to payment of costs of Rs.10,000/-. The petitioner shall also ensure presence of the witness on the date to be fixed by the trial court for the said purpose.

7. With the above directions, the petition stands disposed of.

8. All pending applications also stand disposed of.

JAYANT NATH, J

APRIL 12, 2017

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