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

+ **CM(M) 301/2017**

KHEM SINGH RANA Petitioner
Through Mr.Dilshad Ali and Mr.R.P.S.Bhati,
Advocates

versus

ASHWANI KUMAR SHARMA Respondent
Through Mr.Pankaj Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **28.03.2017**

CM Nos.10423-10424/2017 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 301/2017 & CM No.10422/2017 (stay)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 8.2.2017 by which the right of the petitioner to cross-examine PW-1 was closed.
2. The litigation has a chequered history. The respondent/landlord had filed a suit on 15.4.2011 for possession, recovery of damages and permanent injunction. On 30.10.2012 on an application under Order 12 Rule 6 CPC the prayer of the respondent for possession of the suit property was decreed. The matter was kept pending on the issue of mesne profit/damages. The respondent filed his evidence by way of an affidavit alongwith documents on 3.7.2013. However, none appeared for the petitioner/defendant. The

evidence of the respondent was taken on record and the respondent's witness was discharged. On 30.10.2013 the trial court decreed the suit holding the respondent entitled to damages with interest and costs. The petitioner filed a Regular First Appeal under section 96 of the CPC. The appellate court allowed the petitioner's appeal and remanded the matter back for fresh evidence. The respondent filed an RSA before this court which was disposed of on 10.1.2017. This court had given a last opportunity to the petitioner to cross-examine the said plaintiff/respondent's witness on 8.2.2017.

3. By the impugned order the trial court noted that the counsel for the petitioner was not available on the said date and accordingly closed the right of the petitioner to cross-examine PW-1.

4. I have heard learned counsel for the parties.

5. Learned counsel appearing for the petitioner has submitted that the counsel for the petitioner has appeared in court but had to leave on account of medical problems. Hence, it is urged that a final opportunity be granted to the petitioner to cross-examine PW-1.

6. Learned counsel appearing for the respondent has pointed out that the submission of the petitioner is incorrect as the counsel had appeared and had sought an adjournment as the counsel had to go out of town for a matter. He further submits that after 8.2.2017 even the evidence of the defendant had been completed and the matter is now fixed for final arguments.

7. I may note that this court in RSA 314/2016 on 10.1.2017 has noted as follows:-

“10. Noticing the conduct of the respondent/defendant before the learned Trial court as well as before this court that he chose not to appear before this court despite service, it is directed that on his failure to cross-examine the appellant/plaintiff on

8.2.2017, the opportunity to cross-examine the appellant/plaintiff shall be deemed to have been availed by the respondent/defendant and no further opportunity shall be granted by the learned trial court for the said purpose.”

8. It is manifest that this court had specifically noted that the failure of the petitioner to cross-examine the plaintiff the opportunity shall be deemed to have been availed and no further opportunity shall be granted.

9. In the light of the past conduct of the petitioner and the manner in which the order of this court dated 10.1.2017 was framed, there is no reason to grant any further opportunity to the petitioner. The petitioner cannot be permitted to continue to drag the litigation indefinitely as is sought to be done.

10. Petition is without merits and is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

MARCH 28, 2017

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