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

+ CM(M) 306/2017

JAGDISH CHANDER

..... Petitioner

Through: Mr.Parvez Dabas, Advocate.

versus

RAM PHAL TOMER & ANR

..... Respondents

Through: Mr.Prabodh Shukla and Mr.Vikas
Tomer, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.05.2017

CM No.10480/2017

1. For the reasons stated in the application, 144 days' delay in re-filing the petition is condoned.
2. Application is disposed of.

CM No.10478/2017 & 10479/2017

1. Exemption allowed subject to all just exceptions.
2. Applications are disposed of.

CM(M) No.306/2017

1. The petitioner is aggrieved by the order dated 02.06.2016 passed in CS No.76675/2016 whereby the learned Trial Court has closed the opportunity of the petitioner/defendant No.1 to cross examine PW-1, recording as under:-

*Adjournment sought by Ld. Px. Counsel for contesting
defendant no. 1 for further cross examination of this witness on*

behalf of defendant no. 1 on the ground that main Ld. Counsel for defendant no. 1 has not come today due to the reason that his wife is sick today. Heard and perused the file for this purpose. Not an iota of medical paper filed on record today qua alleged illness of wife of counsel for defendant no. 1. In the further considered opinion of this Court, even otherwise, it is no excuse to seek adjournment on this ground. Hence, further adjournment on this ground. Hence, further adjournment not given for this purpose. Hence, cross examination of this witness, on part of contesting defendant no. 1, is hereby dispensed with and this witness discharged.

2. Learned counsel for the petitioner submits that his only prayer is that one opportunity may be granted to the petitioner to cross examine PW-1 and petitioner is ready to abide by such terms and conditions as deemed fit by this Court while considering his prayer.
3. Learned counsel for the respondent No.1/plaintiff submits that since the non-appearance of the counsel for the petitioner on the date, when the opportunity to cross examine PW-1 was closed, was due to some personal difficulty of the counsel, he has no objection if the prayer of the petitioner is allowed subject to certain conditions as deemed fit by this Court.
4. In view of the submissions made above by learned counsel for the parties, the petition is allowed and petitioner/defendant No.1 is granted only one opportunity to cross examine PW-1, subject to payment of cost of Rs.5000/- which shall be paid by the petitioner/defendant No.1 to the learned counsel for the respondent No.1/plaintiff before commencement of cross examination.
5. Parties are directed to appear before the learned Trial Court on the date fixed before the learned Trial which is stated to be 11th July, 2017.
6. PW-1 shall appear before the learned Trial Court on 11th July, 2017 for his cross examination.

7. The petition is allowed in above terms.
8. It is made clear that if cost is not paid by the petitioner/defendant No.1 to the respondent No.1/plaintiff on the next date of hearing fixed before the learned Trial Court, this petition shall stand dismissed.
9. A copy of this order be sent to the learned Trial Court for information and compliance and be also given dasti to learned counsel for the parties, as prayed.

CM No.10477/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 25, 2017

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