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

+ CM(M) 534/2017

LAXMAN SINGH SAINI

..... Petitioner

Through: Mr.Ram Kishan, Advocate.

versus

BADRI PRASHAD SAINI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.05.2017

CM No.18162/2017 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 534/2017

1. The petitioner who is plaintiff in Suit No.176/2016 is aggrieved by the order dated 7th April, 2017 whereby the application filed by the respondent/defendant seeking recall of PW-1, 2 & 3 for cross-examination has been allowed by the learned Trial Court, subject to cost.
2. The reasons noted by the learned Trial Court for granting permission are recorded in para 4 & 5 of the impugned order which reads as under:

“(4.) Upon perusal of the record it is not clear why learned counsel for the defendant did not cross examine the PW's. There is nothing on record to show that the defendant gave any specific instructions to the learned counsel not to

cross examine the PW's. It appears that the defendant was not aware of the fact that PW's were not cross examined on his behalf and he was also not aware of the consequences there of. The moving of the present application on behalf of the defendant show that he definitely wants all the PW's to be cross examined on his behalf.

(5.) In the interest of justice the present application is allowed subject to cost of ₹3,000/- to be paid by the defendant to the witnesses @ ₹1,000/- each. The defendant shall also be at liberty to lead DE after the cross examination of PW's is over."

3. The extraordinary jurisdiction vested in this Court under Article 227 of the Constitution of India is to advance justice and not to thwart it.
4. Learned Trial Court has specifically noted that the counsel for the defendant preferred not to cross examine the plaintiff's witnesses and it happened without there being any instruction from the defendant or with his knowledge.
5. The learned Trial Court has exercised the judicial discretion by giving an opportunity to the defendant to test the credibility of the three witnesses examined by the plaintiff by subjecting them to cross examination. The learned Trial Court has also ensured expeditious trial by fixing a short date for the said purpose.
6. Finding no illegality or infirmity in the impugned order, the petition is dismissed.

CM No.18161/2017 (stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 15, 2017/ 'hkaur'