

\$~48

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

+ CM(M) 576/2017

BHIM SAIN

..... Petitioner

Through: Mr.Nitin Khanna, Advocate.

versus

DHARAM PAL & ORS

..... Respondents

Through: Mr.O.P.Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

24.05.2017

CM 19930/17 (Exemption)

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

CM(M) 576/2017 and CM 19929/17 (Stay)

1. The petitioner is aggrieved by the order dated 22nd December, 2016 whereby the learned Trial Court has given one opportunity to cross-examine DW-1 Sh.Bhim Sen, subject to cost of Rs.2,000/-
2. The petitioner is defendant No.2 in Civil Suit No. 122/15 (15372/16). The application under Section 151 CPC which was disposed of vide impugned order was filed by defendant No.1 with the prayer to avail an opportunity to cross-examine DW-1 Sh.Bhim Sen. The application was opposed on behalf of the defendant No.1 on two grounds:
 - (i) There is no legally admissible written statement filed by the defendant No.2.

(ii) Defendant No.1 has been proceeded ex-parte on 4th July, 2008 and the application filed by him under Order IX Rule 7 CPC has already been dismissed on 18th April, 2016.

3. The learned Trial Court allowed the opportunity to defendant No.2 to cross-examine DW-1 recording the following reasons:

*“This Court is of the considered view that the case is at the trial stage and final arguments are yet to be heard. The interest of justice shall be met in allowing all the parties to participate in the Court proceedings for just and proper adjudication of issues of the suit. It cannot be disregarded that there is no explained cause of delayed filing of the present application. Accordingly, the application is **allowed to the limited extent** that defendant no.1 shall have only one opportunity to cross examine DW1 Sh. Bhim Sen within the legal legitimate scope available for pointing out legal infirmities or patent illegalities or bringing forth any falsity in the defence or deposition of DW1. The opportunity is granted **subject to cost of ₹2000/-** to be paid to defendant no. 3 whose witness is being recalled for re-examination.*

Case to come up for cross of DW1 for 27.04.2017”

4. Since the learned Trial Court has exercised the discretion in the interest of justice permitting defendant No.2 to cross-examine DW-1 Sh.Bhim Sen within the limited scope permissible under the law, no interference is warranted by this Court in exercise of the discretion by the learned ADJ.

5. The petition is dismissed.

PRATIBHA RANI, J.

MAY 24, 2017

‘hkaur’