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

+ CM(M) 1/2017

SADA RAM KADIAN ..... Petitioner  
Through Mr.Manoj Kumar, Advocate

versus

NIRMALA YADAV ..... Respondent  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

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**12.01.2017**

1. By the present petition the petitioner seeks to impugn the order dated 8.11.2016 by which the trial court noted that the date was fixed as a last and final opportunity for the petitioner to lead evidence but the petitioner has failed to summon/produce witnesses, namely, Shri O.P.Chaudhary, Shri S.P.Chaudhary and Shri S.D.Atri. Accordingly, plaintiff's evidence was closed. At that stage, counsel for the petitioner submitted that one of the plaintiff's witness, namely, Shri Sushank Yadav was examined in chief vide order dated 26.7.2016 but his cross-examination could not be done by the other side and he may be allowed to lead his evidence. The trial court, however, noted that since 1.12.2015 several opportunities have been given to the petitioner to examine the witnesses. It also noted that only three witnesses, namely, Shri O.P.Chaudhary, Shri S.P.Chaudhary and Shri S.D.Atri were allowed to be examined and hence it disallowed the request of the petitioner.

2. I have heard learned counsel for the petitioner. An advance copy of the petition has been sent to the respondent, but none is present on her behalf.

3. The limited question is as to whether the witness Shri Sushank Yadav should be allowed to be cross-examined. The admitted position is that he is named as one of the witnesses in the list of witnesses filed by the petitioner. His evidence by way of affidavit was filed by the petitioner long back. This fact has been noted by the trial court in its order dated 1.12.2015. Thereafter on 26.7.2016 his affidavit was tendered in evidence and the matter was adjourned for his cross-examination as on that date the lawyers were stated to be on strike.

4. In this background, in my opinion, it would be highly improper to disallow the cross-examination of the said witness.

5. The trial court has disallowed the said cross-examination on an interpretation of order dated 1.12.2015. It is true that order dated 1.12.2015 did not specifically permit cross-examination of Shri Sushank Yadav. The relevant portion of the order dated 1.12.2015 reads as follows:-

“In view of the totality of the facts, let the witnesses particularly notary public namely, O.P.Chaudhary, S.P.Chaudhary and S.D.Atri are allowed for their evidence in the interest of justice.”

6. A reading of the above order shows that the word “particularly” used in the aforesaid direction implies that the other witnesses have not been disallowed. In fact there is no specific reason given in the said order as to why Shri Sushank Yadav cannot be cross-examined. The another fact that is of significance is that subsequently after 1.12.2015 on 26.7.2016 the same

court had permitted his evidence by way of affidavit to be tendered in evidence. If his evidence had been disallowed on 01.12.2015, there was no reason to allow him to file affidavit by way of evidence on 26.07.2016.

7. In view of the above, it would be in the interest of justice that the petitioner be allowed to cross-examine Shri Sushank Yadav. In the absence of any such direction the petitioner would suffer grave and irreparable loss.

8. The present petition is allowed as above. All pending applications, if any, also stand disposed of accordingly.

**JAYANT NATH, J**

**JANUARY 12, 2017**

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