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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1041/2017 & CM No. 34290/2017**

DAYA SHANKER (DECEASED) THR LR Petitioner
Through: Mr. Anil K. Bhasin, Advocate.

versus

SAT PRAKASH (DECEASED) THR LRS & ANR Respondents
Through: Mr. S.H. Nizami, Advocate for R-1.
Mr. M.N. Jha with Mr. T.A. Khan,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **29.11.2017**

By the impugned order dated 25.08.2017, the Civil Judge struck off the name of witness Shankar Lal sought to be examined by the petitioner, he being a defendant in the civil suit (Suit No. M-60662/2016), *inter alia*, observing that the party which was examining the said witness i.e. the petitioner had adopted delay tactics against the backdrop of the facts that the witness could not be found at the given address when the Commission appointed by the Civil Judge visited the place with the parties and their respective counsels accompanying him.

After some hearing, learned counsel for the petitioner submitted that he would not insist on the examination of the witness whose affidavit is already on record of the civil suit by Commissioner and, instead, he would pray for the presence of the witness to be secured

before the court by service of summons or if need be, by appropriate duress processes.

The counsel for the first respondent, who is the plaintiff in the suit, fairly conceded to the prayer thus made. The prayer to the above effect is granted.

The impugned order striking off the name of the witness is set aside. The Commission appointed by the Civil Judge is cancelled. The learned Civil Judge will issue appropriate process to the witness upon steps being taken by the petitioner. The counsel for the petitioner undertakes that he would be scrupulous in abiding by the directions, including the timeline fixed by the Civil Judge, for steps to be taken.

The petition and the pending application stand disposed of with these directions.

R.K.GAUBA, J

NOVEMBER 29, 2017

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