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

Decided on: 29th November, 2017

+ CM(M) 1102/2017 and CM No.45580/2016, 45581/2016

SURESH KUMAR GUPTA

..... Petitioner

Through: Mr. Sushil Kumar Singh, Adv. with
Mr. Shrinkar Chaturvedi, Adv.

versus

VIJAY KUMAR & ORS

..... Respondents

Through: Mr. Yashovir Singh, Adv. for R-1.
Mr. Sanjay Shah, Adv. for R-2.
Mr. Gurjit Singh, Adv. for R-3 & R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By the impugned order dated 13.07.2016 passed on the file of the civil suit of the petitioner (CS No.376/2015), the learned Additional District Judge ordered closure of the opportunity for his evidence which is the direction with which he is aggrieved as agitated by the petition at hand.
2. At the hearing, counsel representing the respondents submits that issues were framed by order dated 20.10.2011 and the first witness was examined by the petitioner on 13.07.2016, no steps having been taken for summoning or securing the presence of other witnesses, it being conceded at the same time that the list of witnesses submitted includes 18 names.

3. The impugned order does not contain any reasons worth the name as to why the plaintiff was to be denied opportunity to examine witnesses other than his own testimony.

4. The objection raised by the respondents at the hearing on the petition at hand is most unfair. Copies of the proceedings which have been filed reveal that after the issues had been framed, the case got derailed on account of applications being moved for amendment of the pleadings or for impleadment of additional parties, such move being also at the instance of the respondents, who are the defendants in the case. A copy of the statement of Suresh Gupta (PW-1), who was examined on the date the impugned order was passed has been submitted along with the petition. On being asked, counsel for the respondents submitted that it took about two hours to complete the examination and cross-examination of the said witness. If it were so, this Court accepts submission of the petitioner that, it was impractical for the presence of other witnesses to be secured on the same date.

5. In above facts and circumstances, the impugned order whereby the opportunity for remaining evidence was declined to the petitioner, is set aside. The learned trial Court is directed to fix the case for a suitable date convenient to its calendar to facilitate the examination of the remaining witnesses subject, of course, to the relevancy of such witnesses being considered first.

6. The petitioner shall be entitled to proper and effective opportunity to do so but will be duty bound to take all the necessary steps well in time for the presence of the witnesses to be secured.

7. With these observations, the petition and pending applications stand disposed of.

NOVEMBER 29, 2017
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R.K.GAUBA, J.