

\$~31

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

+ CM(M) 1133/2017

RAJ KUMAR NAYYAR Petitioner
Through: Ms. Garima Gupta, Adv.

Versus

OM PRAKASH NAYYAR (DECEASED) Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.10.2017**

CMs No.36865/2017 & 36866/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 1133/2017 & CM No.36864/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 23rd August, 2017 in CS DJ No.78374/2016 of the Court of Additional District Judge (ADJ)-II (North-West), Rohini Courts, Delhi) of dismissal of the application of the petitioner/defendant for producing DW-2 for further cross-examination by the respondent/plaintiff as well as the subsequent order dated 21st September, 2017 for re-opening the evidence of the petitioner/defendant for producing the said DW-2.

4. The counsel for the petitioner/defendant has argued that DW-2 was a handwriting expert produced by the petitioner/defendant and on the date

when the matter was listed for his remaining cross-examination, he telephonically informed the counsel for the petitioner/defendant that he was unwell and unable to appear. It is contended that the evidence of DW-2 which, till recorded also has been ordered to be not read in evidence, is very important to the petitioner/defendant.

5. The order dated 23rd August, 2017 records that on that date itself, part oral final arguments in the suit were also heard from the counsels for the parties; the suit was adjourned for further oral final arguments to 13th September, 2017. The order dated 21st September, 2017 also adjourned the suit to 3rd October, 2017 for remaining oral final arguments.

6. I have enquired from the counsel for the petitioner/defendant as to what happened on 3rd October, 2017.

7. The counsel for the petitioner/defendant states that hearing of final arguments has been concluded and the suit has been reserved for judgment and listed for the said purpose on 17th October, 2017.

8. The petitioner/defendant in the aforesaid facts has approached this Court after considerable delay. At this stage, it is not deemed appropriate to interfere.

9. The petition is dismissed with liberty to the petitioner/defendant to, if remains aggrieved from the final judgment and if takes any remedy thereagainst, also urge the grounds as urged in this petition.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 13, 2017

bs..

CM(M) 1133/2017