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

+ CM(M) 1262/2017 & CM No. 40117/2017

ANIL KUMAR

..... Petitioner

Through: Mr. Bharat Bhushan Dhingra,
Advocate with petitioner in person.

versus

REKHA GOEL

..... Respondent

Through: Mr. T.C. Sharma, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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07.12.2017

By order dated 21.09.2017, on the file of civil suit (CS 58712/16) of the respondent herein (the plaintiff), the Senior Civil Judge directed the evidence of the petitioner (defendant in the suit) to be recorded by Court Commissioner. The Senior Civil Judge gave detailed directions including on the question of fee to be paid to the Court Commissioner. It is clear from the proceedings, as also the submissions on both sides, that the order was passed *suo moto* by the court, without there being any prayer made by either side, particularly the petitioner. The petitioner moved an application under Section 151 CPC seeking recall of the said order, *inter alia*, expressing difficulty to pay the costs arising out of appointment of a Court Commissioner. The said application was dismissed by order dated 02.11.2017.

Aggrieved by the said orders, the defendant has come up with the present petition.

This Court agrees with the submission of the petitioner that the Court Commissioner should not have been imposed on him, particularly in the face of the fact that he pleads inability to foot the consequence expenses.

The impugned order is set aside. The trial court is directed to proceed with the recording of the evidence of the petitioner on its own. It is, however, made clear that the petitioner will be obliged to cooperate with the trial court and tender his evidence on the date fixed, not making any endeavour to cause delay or commit any default.

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

Copy of order be given *dasti* to both sides.

R.K.GAUBA, J

DECEMBER 07, 2017
srb