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

+ CM(M) 478/2018 and CM Nos. 16495-16497/2018

VIKAS

..... Petitioner

Through: Mr. Anil K. Aggarwal, Adv.

versus

ISHWAR SINGH & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **25.04.2018**

The petitioner is the plaintiff of the civil suit (Misc No. 355/2017) seeking relief of specific performance. The case is being contested by the opposite party. From the proceedings and documents on record, it is clear that issues were framed on 30.09.2014, whereafter the plaintiff had examined two witnesses, the second being Sukhbir Shokeen (PW-2) whose chief-examination had been concluded and he was partly cross-examined on 06.12.2017. Around that stage, the plaintiff moved an application which was pressed under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC) seeking to bring on record certain additional documents (six sale deeds). The said application was dismissed by the trial Court by order dated 06.12.2017 and the matter was adjourned for further cross-examination of PW-2. Eventually, on 19.03.2018, recording

the absence of the counsel for the plaintiff and of the witness PW-2, the trial Judge closed the opportunity of the plaintiff for evidence and adjourned the matter for defendant's evidence to be recorded on 24.04.2018.

The present petition is filed challenging both the said orders dated 06.12.2017 and 19.03.2018.

At the hearing, it was brought out that the order dated 06.12.2017 had been earlier challenged by the petitioner by CM(M) 323/2018 which was dismissed as withdrawn on 19.03.2018 against the backdrop of the proceedings that had been recorded on that date by the trial Court.

After some hearing, the counsel for the petitioner (plaintiff) submitted that he does not press his prayer for bringing on record the additional documents by application under Order VI Rule 17 CPC which was dismissed by order dated 06.12.2017. He submits that the witness (PW-2) was with him in this Court at the time of hearing on the CM(M) 323/2018 on 19.03.2018 which was a reason why he could not appear before the trial Court on the said date. He further submits that in this view the only prayer pressed is for re-opening of the opportunity to tender PW-2 for further cross-examination, it being clear in his submissions that the petitioner does not want to further examine the said witness (PW-2) or any other witness.

At this stage, the counsel for the petitioner submits that he may be permitted to withdraw the present petition and be given liberty to move an application before the trial Court seeking revived

opportunity for tendering PW-2, cross-examination by the opposite party, the petitioner not desirous of examining any other witness.

The petition and the applications filed therewith are dismissed as withdrawn with liberty as prayed granted.

It is hoped and expected that while dealing with the application that the petitioner intends to move, the trial Judge will bear in mind the chronology of events as narrated above.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

APRIL 25, 2018/uj