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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 598/2018 and CM Nos. 21150-21151/2018
M.P. TIWARI Petitioner
Through: Mr. Prem Kumar Sharma, Adv. with
petitioner in person.
versus

UNION OF INDIA & ORS Respondents
Through: Mr. Rajesh Kumar, Adv. for R-1.
Mr. Rajesh Gupta, Mr. Harpreet Singh
and Mr. T.K. Tiwari, Advs. for R-2
and R-3.

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

ORDER
% **21.05.2018**

The respondents have entered appearance on advance notice.

The order under challenge is the one passed on 13.03.2018 by Additional District Judge-13 (Central) on the file of the civil suit (CS No. 12520/2016) whereby the prayer of the petitioner (the plaintiff of the case) for recall of the earlier order dated 13.09.2017 was dismissed. By the order which was sought to be recalled, the Additional District Judge had earlier closed the opportunity of the petitioner to lead evidence in the case.

Since consequent to the said order dated 13.09.2017, the petitioner had apparently not discharged his burden, the defendants submitted before the trial court that they did not wish to lead any evidence and thus, the case has been taken to the stage of final arguments. It is stated that the matter is now listed before the trial

court on 01.06.2018 for hearing of the final arguments.

The civil suit was filed by the petitioner in the year 2004 seeking damages. The issues had been framed on 22.09.2005. The matter remained at the stage of the plaintiff's evidence till 13.09.2017 when the opportunity was closed. In the detailed order dated 13.03.2018, the Additional District Judge has taken note at length of proceedings which have been recorded over the years. Undoubtedly, the petitioner has been guilty of taking one adjournment after the other but then, on some occasions, the adjournments were not on his account or for the reasons attributable to him.

Be that as it may, the matter was before the Additional District Judge for recording of the evidence of the petitioner when it was taken up at 10:35 a.m. The petitioner was present in person with proxy counsel, his request being for passover as his counsel was on the way. The trial Judge allowed passover till 11:30 a.m. and thereafter, took up the matter again at 11:50 a.m. when even the petitioner was not present. It is against this backdrop that the opportunity was closed. In the application for recall of the said order, it was stated that the counsel was still awaited and, therefore, the plaintiff was outside the court room when the impugned order was passed.

Given the above noted chronology and the indulgence already shown to the petitioner, justice demanding that he be given one last opportunity, such opportunity cannot be unconditional.

For the foregoing reasons, the prayer for re-opening of the

opportunity for evidence for the petitioner is allowed, subject to costs of Rs.50,000/- to be deposited with Central Delhi District Legal Services Authority well in advance before 01.06.2018.

On 01.06.2018, the petitioner shall remain present with his counsel duly briefed ready to conduct the case on the first call. On the said date, subject to proof of deposit of costs, the trial Judge will give an opportunity to the petitioner to tender his own evidence whereafter the petitioner shall offer himself for cross-examination by the respondents (defendants in the case) on the same date. He has clarified before this Court that he does not intend to seek any opportunity and, therefore, will not be allowed any opportunity to lead any other evidence.

Needless to add, in the event of the petitioner complying with the above conditions and availing of the renewed opportunity to lead evidence, the defendants in the case will also be entitled to lead evidence in rebuttal.

In case of any further default, the trial Judge will have the jurisdiction and power to close the opportunity once again and proceed with the case in accordance with law.

This disposes of the petition and the applications filed therewith.

Dasti to both sides.

R.K.GAUBA, J.

MAY 21, 2018/uj