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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 781/2018, CM APPL.27750/2018, 41511/2018

SUBARTI KHAN

..... Petitioner

Through: Mr.Bhupesh Narula, Adv.

versus

RANJAN DUBEY

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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04.12.2018

The respondent has not appeared despite advance notice, as submitted.

This petition challenges the order dated 28.04.2018 where the defendant evidence was closed after examining DW1. It is submitted by learned counsel for the petitioner that on 16.02.2017 PW1 was examined but as the learned counsel for petitioner could not appear till 11.35 pm, his right to cross-examine was closed. At 12.50 pm the learned counsel for the petitioner appeared and moved an application under Section 151 CPC to recall PW1 and to allow him to further cross-examine the plaintiff's evidence. However, on many dates his application under Section 151 CPC was kept pending and without its decision the court fixed the case for defendant's evidence. On 31.03.2018 the affidavit of one of the defendant's witness was filed who was examined, cross-examined and discharged on 28.04.2018 but without deciding the application under Section 151 CPC. The

court also closed further evidence of DW1.

I have perused the order sheets. In fact before asking the defendant to lead evidence, his application under Section 151 CPC ought to have been decided by the court, which has not been done in the present case, hence the learned trial court is directed to dispose of the application under Section 151 CPC filed on 16.02.2017 itself and only then the defendant be asked to lead his evidence. The impugned order so far as it relates to the closure of the right of defendant to lead further evidence is thus set aside. The matter is listed before the trial court on 20th December, 2018 and the application under Section 151 CPC be disposed of on the said date.

Petition is disposed of in terms of the above.

Order *dasti*.

YOGESH KHANNA, J.

DECEMBER 04, 2018

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