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

Decided on: 1st February, 2018

+ CM(M) 414/2017 and CM APPL.14240/2017 (stay)

MOHD SHAFEEQ Petitioner
Through: M. Mohsin Israili, Advocate with
M. Saif Islam Israili, Advocate

versus

YOGESH KUMAR VERMA AND ANR. Respondents
Through: Mr. Prashant Sharma Advocate for
R-1 along with R-1 in person.

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

ORDER (ORAL)

1. The controversy raised through the petition at hand arises out of proceedings in the civil suit (CS No.525/2016) in which the respondents 1 to 2 herein are the plaintiffs and the petitioner herein is the defendant no.1.

2. The suit was instituted praying for relief in the nature of possession, *mesne* profits and permanent injunction. It was filed in 2013 and had reached the stage of trial when there were certain defaults on the part of the defendant (*i.e.*, the petitioner). This is confirmed by the copy of the proceedings recorded on 27.10.2016 revealing that though one of the defendants was present, the counsel would not appear in spite of the matter being kept in wait till 2:30 p.m.

No satisfactory explanation worth the name has been offered for such default.

3. The plaintiff Yogesh Kumar Verma was present as his own witness (PW-1), his examination-in-chief having been recorded earlier on 19.02.2015. The cross-examination had been deferred at that stage on the ground the counsel for the defendants was busy. Yet, the counsel would again protract the Additional District Judge (ADJ) closed the opportunity of cross-examination of PW-1 by directions in the order dated 27.10.2016. It may also be noted here that the case had reached the stage of defendants' evidence, when the matter was taken up on 06.02.2017, two witnesses of the defendant were present, examined, cross-examined and discharged. Though affidavit of two other witnesses had been submitted, the witnesses themselves were not present in the court. The ADJ declined to grant any further time and closed the opportunity for defence evidence.

4. The defendant thereafter moved an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) for recall of the order dated 27.10.2016 seeking liberty to cross-examine PW-1. It appears from the copy of the proceedings recorded on 06.02.2017 that the counsel for the defendant gave no objection to court commissioner being appointed at his expenses for such purposes. The trial court, thus, appointed court commissioner, fixed the remuneration and called upon the defendants to pay the fee within one week thereof, giving liberty to the court commissioner to execute the commission availing the court room on any working day at the time when the court was not

in session. It is conceded that the defendant did not pay commissioner's fee and thus, the commission could not be carried out.

5. Against the above backdrop, the defendant seek revival of the right to cross-examine PW-1 and also to lead their own evidence.

6. Having heard both sides and having gone through the record, though it appears that the defendant have tried to cause intentional delay to the proceedings, given the nature of dispute, this court is inclined to grant one more indulgence, though subject to suitable terms.

7. Thus, it is directed that the petitioner will be entitled to cross-examine Yogesh Kumar Verma (PW-1) in the trial court on the date to be fixed for such purposes by the trial judge, subject to payment of costs of Rs.20,000/-. For availing said opportunity, the costs will have to be paid in advance. It shall be the responsibility of the petitioner to arrange the presence of his counsel, duly briefed, ready to conduct the proceedings on the first call of the case. After the said witness (PW-1) has been cross-examined, the trial judge shall take the case to the stage of defendants' evidence, wherein one more opportunity shall be granted to the petitioner (the defendant) for examining his remaining witnesses as per the list statedly already submitted.

8. Needless to add, if the number of witnesses is such as cannot reasonably be expected to be examined in one-go by the trial court, more than one date of hearing for such purposes may have to be fixed. But then, for this, it is the trial judge who shall take a call. Defendant will not raise any objection if the trial judge fixes only one date of

hearing for examination of all the defendants' witnesses.

9. The impugned order to the extent thereby right of the petitioner for adducing evidence in defence and cross-examination of the plaintiffs' witness was curtailed stands set aside accordingly.

10. The petition and the applications filed therewith stand disposed of in above terms.

FEBRUARY 01, 2018

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R.K.GAUBA, J.