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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 990/2018 & CM APPL. 34511/2018**
MOHAN LAL KALRA Petitioner

Through: Mr. Pankaj Kapoor, Advocate

versus

GANESH SHOW Respondent
Through: Mr. Kaustabh Bhardwaj, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **10.09.2018**

Vide the present petition, the petitioner assails the impugned order dated 25.04.2018 of the ADJ-13 (Central), THC, New Delhi in CS No.19024/2016 vide which the right of the petitioner for conducting the cross examination of the plaintiff witness i.e. the plaintiff himself was closed inasmuch as the previous right of the petitioner herein also to conduct the cross examination had been closed vide order dated 06.03.2018 inasmuch as the matter had been fixed earlier for the cross examination of the plaintiff witness on the date 01.03.2018 on which date, an adjournment had been sought on the ground that there was a mistaken belief that a fresh affidavit was to be filed and taking the same into account and that there was a further submission made that the counsel was unwell without any medical record, the right of cross examination of the defendant i.e. the petitioner herein was forfeited with the matter having been renotified

for 27.03.2018 for the remaining plaintiff evidence, on which date, a witness PW-2 Shri Dipak Jindal was examined, cross examined and discharged by the counsel for the petitioner herein.

An application was filed by the petitioner i.e. the defendant to the suit seeking permission to cross examine which had been forfeited vide order dated 06.03.2018, in relation to which the counsel for the plaintiff i.e. the respondent herein had not opposed the same inasmuch as the application had been filed on personal ground and the defendant i.e. the petitioner herein was permitted to cross examine PW-1 on the date 20.04.2018. The proceedings of the date 20.04.2018 indicate that once again an adjournment was sought on behalf of the defendant submitting that the main counsel was unwell and in the interest of justice, one more opportunity was granted by the learned trial Court observing to the effect that in the event of no cross examination being conducted on the next date of the hearing, the right of the defendant i.e. the petitioner herein would be forfeited.

On 25.04.2018, once again a prayer was made on behalf of the defendant i.e. the petitioner herein submitting that the main counsel was unwell. The learned trial Court has observed to the effect that on the date 25.04.2018, the main counsel Mr. Vikram Kapoor was not well whereas on 20.04.2018, it was urged that the counsel Ms. Pooja Kohli was not well. The learned trial Court also observed to the effect that the Vakalatnama filed had three counsel i.e. Mr. Vikram Kapoor, Mr. Pankaj Kapoor and Ms. Pooja Kohli and taking the totality of the circumstances into account, the right to conduct further cross

examination of the plaintiff by the defendant i.e. the petitioner herein was closed.

During the course of submissions that have been made on behalf of the petitioner presently, it has been submitted by the learned counsel Mr. Pankaj Kapoor present for the petitioner that the reasons for seeking the adjournment on the date 25.04.2018 were to the effect that the main counsel for the petitioner herein Mr. Vikram Kapoor was unwell and that he i.e. the learned counsel Mr. Pankaj Kapoor himself was looking after his father and could not put in appearance and the said submission could not be brought forth on 25.04.2018.

The matter is stated to be listed for tomorrow i.e. 11.09.2018 for defendant evidence.

In the interest of justice, taking the reasons put forth on behalf of the petitioner, one single opportunity is granted to the petitioner to conduct the cross examination of the plaintiff Mr. Ganesh Show himself on the date 11.09.2018 subject to payment of cost of Rs.15,000/-. The defendant witness of the petitioner herein is also directed to be present on the date 11.09.2018.

With these observations, the petition is disposed of.

Copy of this order be sent to the learned trial Court.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

SEPTEMBER 10, 2018

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