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

+ **CM(M) 1263/2018 & CM APPL. 43297/2018**

ADITYA PRATAP

..... Petitioner

Through: Mr. Abhimanyu S. Khatri, Advocate.

versus

RAI SINGH & ORS

..... Respondents

Through: Mr. J.V. Rana, Advocate for R-2 & 3.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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15.10.2018

CM APPL.43298/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 1263/2018 & CM APPL. 43297/2018

Submissions made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 16.08.2018 of the learned Trial Court of the Civil Judge-07 in CS SCJ No.96320/16 vide which an application under Order XVI Rule 1 of the CPC filed on behalf of defendant nos. 2 & 3 for examination of the witness namely Rohit Khurana who was present on the said date of hearing before the learned Trial Court and qua which the impugned order indicates that it had been submitted on 27.07.2018 itself that the applicants/ defendant nos. 2 & 3 had met with the said witness, and had learnt about certain material facts and had sought to examine him, the learned Trial Court after observing to

the effect:-

“Heard. The witness to be examined is present before the court and has been asked certain questions by the counsel regarding his credibility. Being satisfied, the application is hereby allowed and said person namely Rohit Khurana is allowed to be examined as a witness”,

directed that the said witness Rohit Khurana be allowed to be examined as a witness and the affidavit of the said witness was indicated to have been filed along with the original Will with the matter having been re-notified. It has been submitted on behalf of the petitioner i.e. the plaintiff in the said suit that the plaintiff was not heard. As reflected hereinabove, vide the impugned order itself it is indicated that the parties were heard. The presumption in terms of Section 114(e) of the Indian Evidence Act, 1872 shall prevail that all judicial acts are done appropriately and in accordance with law.

On behalf of the petitioner, it is submitted that an opportunity may be granted to seek the cross-examination of DW-1 in view of fresh facts that had been brought forth through the testimony of DW-2, qua which the petitioner may seek redressal in relation thereto before the learned Trial Court.

The present petition is disposed of.

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

OCTOBER 15, 2018/NC

ANU MALHOTRA, J