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

+ CM(M) 1559/2018

PRAMOD KUMAR GIRI Petitioner

Through : Mr.T.B.L.Murthy and Mr.R.S. Yadav,
Advocates.

versus

SHAILENDER KUMAR SHARMA Respondent

Through : Mr.M.S.Negi, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **17.12.2018**

CM APPL.No.52865/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 1559/2018, CM APPL.No.52864/2018

This petition challenges the order dated 17.11.2018 whereby the application of the petitioner under Section 151 CPC for recalling of the order dated 25.07.2018 as also waiver of the costs of Rs.10,000/- imposed on 28.05.2018 were dismissed.

The petitioner filed the civil suit against the respondent and it was firstly listed for evidence of petitioner on 10.04.2018 and on 11.04.2018 when both the learned counsels sought adjournment. On 25.04.2018 the petitioner was in judicial custody. The matter was then listed on 08.05.2018 when the lawyers were on strike. Thereafter on 26.05.2018 the learned Presiding Officer was on leave. Thereafter, on 28.05.2018 costs of Rs.10,000/- was imposed upon the petitioner on the ground, the affidavits of witnesses were not on record whereas the affidavit were already filed on 21.05.2018. On 10.07.2018 the evidence could not be recorded as petitioner was again in judicial

custody. However, on 25.07.2018 the evidence of the petitioner was closed on the ground the original documents were not on record whereas the original documents were given by the Court itself to the Investigating Officer in criminal case to be deposited with the CFSL for examination, hence it is urged it would be appropriate if an opportunity be given to lead evidence, subject to cost.

Accordingly, the learned Trial Court shall afford an opportunity to the petitioner on 19.12.2018, the date already fixed for recording the evidence of witnesses other than the petitioner and the petitioner be examined on 14.01.2019, subject to cost of Rs.5,000/- to be paid to respondent besides the earlier costs as imposed by the learned Trial Court. Upon recording evidence of the petitioner, the matter be then listed for evidence of the respondent as per the date to be given by the learned Trial Court. Both the parties shall appear before the learned Trial Court on 19.12.2018.

The petition stands disposed of in above terms. The pending application also stands disposed of. Order dasti to both the parties. The Registry will communicate the copy of this order to the learned Trial Court for information and compliance.

YOGESH KHANNA, J.

DECEMBER 17, 2018

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