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

Date of decision: 9th December, 2019

+ **CM(M) 1148/2019 & CM APPL. 34830/2019**

RAKESH KUMAR SOLANKI Petitioner

Through: Mr. Anil Kumar, Advocate.
versus

RAJ KUMAR & ORS Respondents

Through: Mr. Sunil Chauhan, Advocate for R-2. (M:9818582376)
Mr. Sanjay Kumar Pathak and Mr. Sachin Nawani Advocates for R-4. (M:9910770311)
Mr. Sanjeev Sagar, SC for DDA with Mr. Nazia Parveen, Advocate. (M:9278693021)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. Ld. Counsels for the parties have been heard. It is submitted that Respondent Nos. 5 and 6 are *ex-parte* before the Trial Court.
2. The present petition has been filed challenging the impugned order dated 1st April, 2019 by which the witnesses of the Petitioner/Defendant No.6 were not permitted to be examined and the evidence of Petitioner was closed by the Trial Court. The submission of ld. counsel for the Petitioner is that on the earlier occasion, vide order dated 12th March, 2019 the same very witnesses were permitted to be summoned by the Petitioner and despite the witness coming in the Court, since the record was not brought by the witness, who sought an adjournment to produce the record, the evidence has

been closed on the ground that the list of witnesses was not filed by the Petitioner.

3. There is no doubt that parties have to file list of witnesses prior to the commencement of the Plaintiff's evidence as held in *Zile Singh v. Santosh @ Santra & Ors.*, [CM(M) 1296/2018, decided on 6th November, 2019]. However, the practice of filing of list of witnesses prior to commencement of evidence was not being followed uniformly before the trial courts. Once the witness was present before the Court, the Trial Court ought not to have turned back the said witness.

4. Moreover, the Petitioner wishes to produce the official from the Sub Registrar's office to show that the Respondent owns two other flats and a wrong statement has been made by the Respondent to the DDA. Without going into the details as to why the Petitioner wishes to summon the official from the Sub-Registrar's office, it is sufficient to hold that once the official was present before the Court, the Trial Court ought to have recorded his statement and permitted the production of the record in relation to the properties which the Petitioner wanted to prove that the Respondents own. Summoning of witnesses, especially official witnesses and attendance of witnesses in court proceedings is a cumbersome process and once witnesses are present, trial courts ought to record their statements and not turn them back.

5. Under these circumstances, it is directed that the Petitioner be given one last opportunity to produce the LDC from the office of the Sub-Registrar, Kapashera, to produce the relevant records on the date fixed by the Id. Trial Court. Since the list of witnesses was not filed, the permissions granted today, shall be subject to payment of Rs.10,000/- as costs to the

Respondents. On the said date, the Petitioner shall ensure that the official and the record therewith is produced. No further opportunity shall be granted to the Petitioner. Petition and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 09, 2019

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