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

% *Decided on: 29.11.2019*

+ CM(M) 1636/2019 & CM APPL. 49526/2019

MANAV NARANG & ANR Petitioners

Through: Mr. Vinay Pandey, Advocate.

versus

RAJINDER LAL KHITHA Respondent

Through: Mr. Siddhartha Yadav, Ms. Ishita Yadav and Mr. Deepak Kumar Mishra, Advocates alongwith son of respondent.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order dated 25.09.2019 passed by the learned MACT in Petition No: 370/18 seeking permission to recall and cross examine Mr. Rajinder Lal-PW-1, who was duly cross-examined on 13.08.2019 by Mr. Umesh Gupta, Advocate. The order dated 13.08.2019 reads as under:

“PW Rajinder Lal has filed his evidence by way of affidavit. He is examined, cross examined and discharged. It is submitted by counsel for petitioner that he does not wish to examine any other witness. Statement of counsel for petitioner is recorded separately. Accordingly, PE stands closed.

Matter be now listed for RE on 30.09.2019. Subject to taking steps, Rws be summoned for date fixed.”

2. The owner of the alleged offending vehicle had sought recall of the witness for his further cross-examination. The application in this regard was dismissed on the ground that the said witness had already been duly cross-examined.

3. The impugned order reads as under:-

“Application has been filed on behalf of respondents seeking recall of PW-1 Rajinder Lal. It is averred that on the last date of hearing, he deputed his associate to appear In person.

The witness has been cross examined by Sh. Umesh Gupta, Advocate on behalf of main counsel. Now the application had been filed on the ground that on the last date of hearing, petitioner has filed certain new documents and his associate could not cross examine PW-1 on these documents. He requests for allowing the application for just decision of the case. He relied upon a judgement titled K.K.Velusam,y(sic) Vs. N.Palanisamy in Civil appeal Nos. 2795-2796 of 2011.

Heard. I have gone through the file.

Since, PW-1 was cross examined thoroughly on the last date of hearing and counsel appearing on behalf of respondent did not object to the documents filed by petitioner PW-1,I do not find any merit in the application and the same is dismissed.

At this stage, counsel for respondents submits that he is unable to appear on 30.09.2019, the date fixed on account of retirement of his father.

His request be considered on the date fixed.”

4. The learned counsel for the petitioner submits that the cross examination was conducted by an associate counsel and not by the main counsel who was busy in some other case, therefore, the due cross-examination of the said witness could not be conducted.

5. The Court is unable to agree as to how Mr. Umesh Gupta cannot be regarded as the main counsel because his vakalatnama is on record and he has appeared as the counsel for the said petitioners throughout the hearing of the case before the learned Tribunal.

6. The learned counsel for the claimant submits that indeed Mr. Umesh Gupta is the counsel who has filed the written statement on behalf of the respondents and had assisted the learned Tribunal on every occasion as counsel for the said party.

7. In view of the above, the Court finds no reason to interfere in the impugned order. The petition is without merit and is accordingly dismissed.

NOVEMBER 29, 2019

AB

NAJMI WAZIRI, J

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