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

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Judgment delivered on: 17.10.2019

+ C.R.P. 86/2018

TARUN NAGPAL

..... Petitioner

versus

M/S AUTO INCLINE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sumit Jidani, Advocate.

For the Respondent: Mr. Maninder Jeet Singh, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.01.2018, whereby, the application of the petitioner under Order 18 seeking recall of PW1 has been dismissed.

2. Petitioner had filed the subject suit for recovery of money. PW1 – petitioner was under cross-examination and the matter was adjourned to 22.12.2016. On 22.12.2016, petitioner was present in Court at 10 am, when the matter was called and informed the Court that his counsel had gone to the High Court and could not reach the Court before 11 am. The Court granted a pass over to the petitioner

till 10:30 am with a direction to contact his lawyer and apprise the Court the possibility of his counsel coming earlier. The matter was once again called at 10:45 am when the petitioner was not present and then it was deferred to 11 am. Thereafter it was called at 11 am and then deferred to 11:15 am. At 11:20 am, the Court noticed that none had appeared for the petitioner despite the matter being called several times. The right of the petitioner to cross-examine was closed and his testimony was struck off.

3. Order sheet of 22.12.2016 notes another entry at 11:25 am wherein the presence of the counsel as well as the petitioner is noted. It records that the petitioner had informed the Court that he was waiting for his counsel at gate No.1 of the Court Premises and as such could not appear.

4. Thereafter, petitioner filed the subject application under Order 18 seeking recall of PW1 for examination.

5. Learned counsel for the respondent submits that the petitioner in fact is seeking recall of order dated 22.12.2016 and has not filed any application seeking review/recall of order dated 22.12.2016. He further contends that even before this Court there is no challenge to order dated 22.12.2016.

6. Learned counsel for the respondent submits that though he has raised these objections, however, without prejudice, he has no

objection in case the order dated 22.12.2016 and impugned order dated 16.01.2018 are set aside with a direction that the petitioner should be diligent in prosecuting the petition.

7. In view of the above, order dated 16.01.2018 and order dated 22.12.2016, insofar as it closes the cross-examination of PW1 and strikes off his evidence, are set aside subject to payment of costs of Rs. 3,000/-.

8. Learned Counsel for the Petitioner assures that petitioner shall not seek any adjournment on any ground for deposition of PW1 – petitioner.

9. Trial Court shall fix the matter for the remaining cross-examination of PW1 – petitioner. The Trial Court is further directed to expedite the proceedings.

10. Petition is disposed of in the above terms.

11. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 17, 2019
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