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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 522/2018 & CM APPL. 18269/2018**

VIJAY SINGH

..... Petitioner

Through: Mr. Mukesh Verma & Ms. Meenu
Rani, Advocates.

versus

SWINDER SINGH & ANR

..... Respondent

Through: Mr. Rajan Sabharwal, Advocate for
R-1.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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14.02.2019

The respondent no.2 arrayed on record is apparently a proforma party.

The petitioner assails the impugned order dated 20.03.2018 of the learned Trial Court of the Court of ASCJ-cum-JSCC-cum-GJ (South), Saket Courts in CS No.83659/2016 vide which the right for cross-examination of the plaintiff's witness DW-1 i.e. the petitioner herein was closed inasmuch as it was observed to the effect that the petitioner herein i.e. the plaintiff of the said suit had not been conducting the cross-examination of DW-1 since the date 15.07.2017 despite ample opportunities having been granted and that the costs that had been imposed of a sum of Rs.1,000/- had not been paid to the defendant.

It was also observed vide the impugned order that the adjournment that had been sought on 20.03.2018 on the submission that the counsel for the plaintiff i.e. the petitioner herein had been diagnosed with malaria and a copy of the prescription and a bill had been annexed thereto, also did not suffice to bring forth the contentions that had been raised by the plaintiff i.e. the petitioner herein in as much as the said prescription itself stated that it was not meant for medico legal purpose did not bear the registration number of the medical practitioner and did not bear a stamp on the same and that the learned counsel for the plaintiff had attempted to stall further cross-examination of the DW-1 on flimsy grounds.

During the course of submissions that have been made on behalf of the petitioner, it has been submitted that it had been erroneously recorded in proceedings dated 20.03.2018 in the impugned order by the learned Trial Court to the effect that the costs as imposed on 09.11.2017 had not been paid and it has been sought to be submitted on behalf of the petitioner that the said costs of Rs.1,000/- were paid on 07.02.2018 as per the proceedings dated 07.02.2018. A perusal of the proceedings dated 07.02.2018 before the learned Trial Court indicate to the effect that it has been observed therein that *“Cost imposed vide order dated 09.11.2017 paid to the defendant no.1 and that the DW-1 partly cross-examined and further cross-examination was deferred as smooth conduct of cross-examination was not possible”* as observed by the learned Trial Court

on account of repeated arguments between the learned counsels for the parties.

It has been submitted on behalf of the respondent no.1 by the learned counsel for the respondent no.1 that though the costs imposed vide order dated 09.11.2017 were paid to the defendant no.1 on 07.02.2018, nevertheless the costs as imposed vide order dated 09.08.2017 still remain to be paid and that the same had been inadvertently mentioned as costs not paid qua the costs imposed vide order dated 09.11.2017 whereas the costs as imposed vide order dated 09.08.2017 had not been paid.

Learned counsel for the petitioner now been directed by the Court has been handed over the costs of Rs.1,000/- to the learned counsel for the respondent no.1 for compliance of directions dated 09.08.2017. The order dated 09.08.2017 placed on the record as filed with the respondent no.1 reply to the petition indicates that the matter had been fixed with a last and final opportunity granted previously for the purpose of defence evidence for the date 09.08.2017 which had been given after considering the convenience of both the counsels but even on that date, a request had been made by the learned counsel for the plaintiff i.e. the petitioner herein submitting that he had to appear before this Court for mentioning his personal matter and in those circumstances, the matter had been adjourned for the cross-examination of DW-1. The proceedings dated 15.07.2017 also indicates that the learned counsel for the plaintiff had submitted that he had to rush to pick his child from the school who had been waiting

for two hours and that thus, the matter had been deferred for cross-examination of DW-1.

It has been submitted thus, on behalf of the respondent no.1 that there has been a complete laxity on the part of the plaintiff to conduct the cross-examination of DW-1. Apparently, the litigant ought not to suffer for the lapse of the counsel for the litigant. Taking the same into account, subject to payment of costs of Rs.10,000/- by the petitioner herein i.e. plaintiff to the suit bearing no. CS No.83659/2016, one single opportunity is granted to the plaintiff to cross-examine DW-1 on the date for cross-examination to be fixed by the learned Trial Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J

FEBRUARY 14, 2019/NC