

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1576/2018, CM APPL. 53431/2018
& CM APPL. 53433/2018
NOORJAHAN & ORS Petitioner
Through Mr. Mahboob Alam, Adv.

versus

KHAIRUNISA Respondent
Through Mr. Badre Alam Khan, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **07.01.2019**

The reply to the petition has been handed over in the Court on behalf of the respondent, which is taken on record in the interest of justice. Copy thereof has been supplied to the learned counsel for the petitioners.

On a consideration of the rival submissions made on behalf of either side and on a perusal of the impugned order dated 29.11.2018 of the learned Trial Court in CS 50854/16, indicating that the plaintiff's evidence was closed on 16.11.2018, the matter then was listed for defence evidence on 27.11.2018, 28.11.2018 and 29.11.2018 and that on 27.11.2018, an application was filed by the defendant i.e. the petitioner herein seeking issuance of dasti summons for witnesses which witnesses could not be served for the date 28.11.2018 and 29.11.2018, the application was filed on behalf of the defendant no. 1 i.e. the petitioner no. 1 herein that she was

CM(M) 1576/2018

page 1 of 3

unwell with it having been observed by the learned Trial Court to the effect that the ailment having not been specified and medical documents having not been produced, ample opportunities having been provided for three dates i.e. 27.11.2018, 28.11.2018 and 29.11.2018 with directions for expeditious disposal being repeatedly given, the defence evidence was closed.

On behalf of the petitioner, it has been submitted that no adequate ample opportunity was granted to the petitioner herein i.e. the defendant of the suit to produce the evidence and the witnesses could not be produced thus within the period of time fixed on 16.11.2018 i.e. 27.11.2018, 28.11.2018 and 29.11.2018. Learned counsel for the respondent submits that the previous conduct of the petitioner indicates that there were dilatory tactics adopted in the cross-examination of the plaintiff.

Taking into account however the factum that the matter was fixed for defence evidence vide order dated 16.11.2018 and 27.11.2018, 28.11.2018 and 29.11.2018, and thus the witnesses having been sought by the defendants i.e. the petitioner herein to be produced with an averment having been made that the defendant no. 1 i.e. the petitioner no. 1 herein was unwell on the date of hearing fixed.

In the interest of justice, it is considered appropriate to allow one single opportunity to the defendants i.e. the petitioners herein to complete their evidence on the date to be fixed by the learned Trial Court.

The petition is disposed of accordingly.

Parties are directed to appear before the learned Trial Court for 09.01.2019.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 07, 2019/MK