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

+ **CM(M) 234/2019 & CM APPL. 6429/2019**

BHOPAL

..... Petitioner

Through: Mr. H. P. Chakravoti, Advocate.
(M:9891070823)

versus

MADHU JAIN & ANR

..... Respondents

Through: Mr. Shiv Charan Garg and Mr. Imran
Khan, Advocates. (M:9811061563)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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07.02.2020

1. The present petition has been filed challenging the impugned order dated 11th December, 2018, by which an application filed by the Petitioner/Defendant (*hereinafter*, “*Defendant*”) to examine one more witness has been rejected by the Trial Court.
2. Ld. counsel for the Defendant submits that he seeks only one opportunity to produce a material witness i.e., Ms. Poonam Jain to depose in the matter.
3. On the other hand, ld. counsel for the Respondents/Plaintiffs (*hereinafter*, “*Plaintiffs*”) opposes the request and submits that repeated adjournments had been taken by the Defendant to even lead evidence in the matter. Ld. counsel submits that the Plaintiffs’ evidence had concluded in 2015 itself and since then the Defendant has not concluded his evidence.
4. A perusal of the order sheets in this matter shows that issues were framed on 19th October, 2012. The Plaintiffs’ evidence was concluded on

27th August, 2015 and the Defendant was directed to lead evidence. The matter was adjourned on 1st February, 2016 and 5th August, 2016. On 6th February, 2017, the cross-examination of DW-1 was deferred at the Plaintiffs' request. On 16th August, 2017, no witness on behalf of the Defendant was present. On 25th October, 2017, none appeared for the Plaintiff and the cross-examination of DW-1 by the Plaintiff was closed. An application under Section 151 CPC was then moved for recalling DW-1. Submissions were heard on this application on 15th February, 2018. On payment of costs, re-examination of DW-1 i.e., Mr. Bhopal Singh was permitted. Thereafter, DW-1's cross-examination continued and he was discharged on 4th August, 2018.

5. The Defendant now wishes to lead the evidence of Ms. Poonam Jain, who is the wife of the Defendant. The affidavit of the said witness is already on record. It is also seen that her name was on the list of witnesses. The affidavit is objected to by the ld. counsel for the Plaintiffs on the ground that the same goes beyond the pleadings i.e., the written statement.

6. Considering that the delay in conclusion of evidence is not only by the Defendant but also by the Plaintiff and also considering that there are detailed facts in the pleadings about the role of the witness viz., Ms. Poonam Jain, the Defendant is permitted to adduce her evidence. Since Ms. Jain's name was in the list of witnesses, one date is fixed for the examination-in-chief and cross-examination of Ms. Poonam Jain, subject to payment of Rs.10,000/- as costs, including the earlier costs imposed by this Court.

7. It is however made clear that the Trial Court shall examine the affidavit in evidence of Ms. Poonam Jain and ensure that the contents of the affidavit are only to the extent that they are supported by pleadings.

8. Ms. Poonam Jain shall appear before the Trial Court on 14th February, 2020. No further opportunity shall be granted. The costs shall be tendered by the Defendant to the Plaintiffs, to be shared equally, on the said date.
9. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 07, 2020

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