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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 175/2020 and CM APPL. 5612/2020, 5613/2020**

SAURABH BANSAL Petitioner
Through: Mr. Rupesh Kumar, Advocate (M:
9810793688).

versus

NITIN GUPTA Respondent
Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **12.02.2020**

1. The grievance in this case is that vide the impugned order dated 11th October, 2019, the Trial Court has struck off the defence of the Petitioner herein/Defendant (*hereinafter 'Defendant'*). The order reads as under:

“Regular stenographer is on leave and no substitute has been provided.

The undersigned is also looking after the work of vacant court of PO-MACT, Shahdara, Delhi.

It is submitted on behalf of respondent that the counsel for respondent is not available today. On the last date of hearing, last and final opportunity was given to the defendant for cross examination of plaintiff witness subject to cost of Rs. 5000/-. In these circumstances, it appears that the defendant is not interested in the present case. Accordingly, defence of the defendant is hereby struck off.

Put up for PE on 22.01.2020.

More call not possible as there are 52 matters listed today. Shortest possible date is given considering the pendency as well as regular cause list of this court. There are pendency of around 2000 cases in this court.”

2. Ld. counsel for the Defendant submits that the father of the Defendant was present in person, the matter was called before 11 A.M. and only a pass

over was sought which was not granted by the Trial Court. It is submitted that in all the matters, dates were given by 11 A.M. itself on the said date. This has also transpired on the previous dates i.e. 30th May, 2019 and 18th September, 2019.

3. A perusal of the orders passed in this matter shows that on each and every date, the Id. ADJ records the number of cases pending in the said Court and other logistical problems/hurdles being faced by the Court. The impugned order is also reflective of the same. Moreover, the Trial Court could not have struck off the defence of the Defendant when the written statement was on record. Considering the fact that recovery being sought is of more than Rs. 7,00,000/- and as per the Id. counsel for the Defendant, the Defendant has also been acquitted in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, it is deemed appropriate to grant an opportunity to the Defendant to cross examine the Plaintiff's witness. It is submitted that PW1 has already partly been cross examined by the Defendant.

4. Accordingly, the cross examination by the Defendant of PW1 is permitted. The impugned order is set aside. After the Plaintiff's evidence is concluded, the Defendant's evidence shall continue. Costs imposed are also waived.

5. It is submitted that the Court has been abolished now and a new Judicial Officer is dealing with the matter. Let cross examination of PW1 be conducted on the next date before the Trial Court. The order sheet in this case be brought to the notice of the concerned District Judge (Karkardooma Courts) so that any steps which may be required for making a stenographer etc. available may be taken expeditiously.

6. The petition with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 12, 2020/MR