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

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Judgment delivered on: 27.07.2020

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CM(M) 392/2020

NARESH KUMAR

..... Petitioner

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents

Advocates who appeared in this case:

For the petitioners: Mr. R.D. Chauhan with Mr. Arun K. Chauhan, Advocates.

For the Respondent: Mr. Sanjeev Sagar, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.16491/2020 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 392/2020 & CM APPL.16490/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Issue notice. Notice is accepted by learned counsel appearing for the respondents.

3. With the consent of parties, the petition is taken up for hearing today.

4. Petitioner, by this petition, impugns order dated 24.01.2020, whereby, application of the petitioner to lead evidence has been dismissed.

5. Petitioner had filed the suit which was decreed in favour of the petitioner. In an appeal filed by the respondent, the Appellate Court decided to have demarcation done and accordingly, respondent was given an opportunity to lead evidence and prove the demarcation. After the respondent led their evidence and the witness was cross-examined by the petitioner, petitioner moved the subject application seeking opportunity to lead evidence which application has been dismissed solely on the ground that the petitioner has already cross-examined the witness of the respondent.

6. In an adversarial system where one party leads evidence, the other party not only has a right to cross-examine the witness but also has a right to produce evidence in his favour, if the party so desires.

7. Merely because the petitioner has cross-examined the witness of the respondent who has carried out the demarcation, does not disentitle the petitioner to lead independent evidence to rebut the demarcation report.

8. The Appellate court has clearly erred in declining the Petitioner an opportunity to lead evidence solely on the ground that the

petitioner has extensively cross-examined the witness of the respondent.

9. In view of the above, impugned order dated 24.01.2020 is set aside. Petitioner is given one opportunity to summon his witnesses and documents in accordance with law. However, the evidence to be brought by the petitioner shall be limited to rebut the evidence led by the respondent in the appeal. Petitioner shall not be entitled to re-summon Mr. Sushil Kumar Sikerwar, who was examined by the respondent as AW-1.

10. Petition is, accordingly, allowed in the above terms.

11. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

JULY 27, 2020
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SANJEEV SACHDEVA, J

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