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

*Date of decision: 28<sup>th</sup> February, 2020*

+ **CM(M) 971/2019, CM APPLs. 29074/2019 & 29075/2019**

**B K AGGARWAL (DECEASED) THR LRS**

**& ORS**

..... Petitioners

Through: Mr. Sidharth Joshi, Ms. Ambareen  
and Mr. Dhanesh Dhotre, Advocates.  
(M:9818509714)

versus

**MAHINDER NATH GUPTA(DECEASED)**

**THR LRS**

..... Respondent

Through: Mr. Mukesh M. Goel and Ms. Pooja  
Kashyap, Advocates.  
(M:8447288207)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. The Petitioners herein/Defendants (*hereinafter* 'Defendants') challenge the impugned order dated 8<sup>th</sup> March, 2019 by which the review sought of order dated 9<sup>th</sup> January, 2019 was dismissed by the Trial Court.
2. Suit for perpetual and mandatory injunction was filed by the Respondent herein/Plaintiff (*hereinafter* 'Plaintiff') in respect of property bearing No. 2-A, Commissioners Lane, Civil Lines, Delhi. The said suit was filed in 1993. Issues were framed on at least three occasions and lastly on 3<sup>rd</sup> February, 2018. The Plaintiff's evidence had to commence. Orders of the Trial Court show that on 2<sup>nd</sup> November, 2018, for the first time, the affidavit of PW-1 was supplied. Thereafter on 14<sup>th</sup> November, 2018 a Local

Commissioner was appointed for recording the evidence and on 1<sup>st</sup> December 2018, PW-1 was partly cross-examined. On 7<sup>th</sup> December, 2018, ld. counsel for the Plaintiff made a submission that he is not in a position to lead evidence before the Local Commissioner. Accordingly, a prayer was made to keep the evidence before the Court. On 9<sup>th</sup> January, 2019 the matter was listed at 10:45. A.M. and the cross-examination was to commence. On the said date, PW-1 was present, however, the main counsel for the Defendants did not appear and considering that the suit is more than 20 years old the Trial Court closed the right of the Defendants to cross-examine PW-1.

3. The Defendants then moved an application seeking review of the said order on 8<sup>th</sup> March, 2019. The Plaintiffs took a plea that the review is barred by limitation and the Trial Court observed that the certified copy was made available to the Defendants on 22<sup>nd</sup> January, 2019 and there is no ground to condone the delay. Accordingly, the review application was dismissed by the Trial Court.

4. Ld. counsel for the Defendants submits that the certified copy of the order date 9<sup>th</sup> January, 2019 was applied for on 19<sup>th</sup> January, 2019 and was issued to the Defendants only on 5<sup>th</sup> March, 2019 thus, the review petition was not barred by delay.

5. On the other hand, ld. counsel for the Plaintiff submits that the conduct of the Defendants has been only to delay the proceedings and nothing more. The witness is more than 60 years of age and completely irrelevant questions are being put to the witness.

6. This Court cannot, in the present petition, render any opinion on the content of the cross-examination being conducted as the scope of the present

petition is restricted to the orders dated 9<sup>th</sup> January, 2019 and 8<sup>th</sup> March, 2019. When the evidence was closed on 9<sup>th</sup> January, 2019, PW-1 was present. The said order shows that the Defendants have been a bit callous in this matter. Even thereafter, the Petitioners/Defendants, could have moved a review immediately, which they did not do and only sought to file the review on 8<sup>th</sup> March, 2019.

7. Thus, there was delay in filing of the review. The litigant, however, ought not to suffer due to the negligence or otherwise of the counsel in this case. Without going into the merits, in order to ensure that the Defendants case is not prejudiced irreparably, this Court grants a last opportunity to the Defendants to conduct the cross-examination of the Plaintiff's witnesses, subject to costs. Insofar as PW-1 is concerned, the cross-examination shall be conducted on a specific date in the afternoon session between 2 PM to 5 PM before the Trial Court. If the Trial Court is of the opinion that the witness does not answer the questions properly or seeks any time, then the Trial Court may extend the cross-examination. However, the Trial Court should ensure that the cross-examination is precise and should not unnecessarily be prolonged by either of the parties. The cross-examination is being permitted subject to payment of Rs.20,000/- as costs to the Plaintiff. If the cross-examination is not conducted on the date fixed, the present order would be peremptory in nature and no further opportunity shall be granted to the Defendants to cross-examine the Plaintiff's witness. Since there are no other witnesses on behalf of the Plaintiff, after the cross-examination of PW-1, the Defendants shall lead their evidence. The evidence in this matter shall be concluded within a period of six months from today and thereafter the trial court shall dispose of the suit expeditiously. The costs shall be paid on

or before the next date in the Trial Court.

8. With these observations the petition and all pending applications are disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**FEBRUARY 28, 2020**

*Dj/A.S.*

