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

+ CM(M) 1045/2018 & CM No.36185/2018

RAGHBEER MACHINERY PVT LTD Petitioner
Through Mr.Rohan Swarup, Adv.

versus

ANIL SHARMA Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **18.02.2020**

1. This petition has been filed by the petitioner challenging the order dated 04.06.2018 passed by the learned Additional District Judge-08, Central, Tis Hazari Courts, Delhi in Suit No.19291/2016, titled **Anil Sharma v. Raghbeer Machinery**, closing the right of the petitioner herein for leading its defence evidence.
2. By an order dated 05.09.2018 of this Court, the operation of the Impugned Order was stayed.
3. In spite of notice, none appears for the respondent. The respondent is therefore proceeded *ex-parte*.
4. It is the case of the petitioner that the petitioner had filed an affidavit of evidence of Mr.Sunil Kumar Malhotra, who after filing of the affidavit of evidence superannuated from the job. In spite of his superannuation, he was requested to make himself available for his cross examination on 10.04.2018. On the said date, his cross examination could not take place as

the learned counsel for the respondent was not present due to lawyers' strike. On the next date of hearing, that is 04.06.2018, Mr.Malhotra did not agree to appear. The petitioner thereafter made a request for substituting the witness or to take some other steps for calling its witness. This request was declined by the Impugned Order and the evidence of the petitioner was closed.

5. The learned counsel for the petitioner submits that the petitioner shall file the affidavit of evidence of the substitute witness positively within a week from today and will ensure that the said witness is available for his cross examination on the next date of hearing fixed by the learned Trial Court.

6. Having considered the submission made, the Impugned Order dated 04.06.2018 passed by the learned Trial Court is set aside, granting one final opportunity to the petitioner to lead its evidence, subject to the condition that the petitioner shall file the affidavit of the substitute witness positively within a week from today. The petitioner shall also ensure that the said witness is available for his cross examination on the next date of hearing before the learned Trial Court, which is stated to be on 12.03.2020.

7. The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 18, 2020/Arya