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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1215/2018 and CM APPL. 41405/2018**
MOHD ANEES (DECEASED) THR LRS Petitioner
Through: Mr. Manish Kr. Singh (M:
9911277043).

versus

MOHD SAMY (DECEASED) THR LRS Respondent
Through: Mr. Prateek Gangwani, Advocate (M:
9990021917).

CORAM:

JUSTICE PRATHIBA M. SINGHs

ORDER

% **08.01.2020**

1. The present petition challenges the impugned order dated 26th July, 2018, by which the Petitioner's/Plaintiff's (*hereinafter*, "*Plaintiff*") application for recall of order dated 28th October, 2016, by which the Plaintiff's evidence was closed, was dismissed with costs of Rs. 10,000/-.
2. The Plaintiff filed the suit for partition in the year 2000 and issues were framed on 22nd March, 2006. Till 28th October, 2016, the evidence of the Plaintiff was not concluded. Accordingly, on 16th May, 2016, the Plaintiff was directed to adduce evidence, which, according to the Id. counsel for the Plaintiff was not done due to the original Plaintiff – Mr. Mohd. Anees passing away. Though Mr. Mohd. Anees is stated to have already given evidence in the matter, his wife and son also wish to give their evidence.
3. Id. counsel for the Plaintiff submits that the wife is suffering from severe heart disease. He relies upon the prescription and other medical documents issued by the Ram Manohar Lohia Hospital to support the said plea. It is submitted that the documents placed on record clearly show that in

September, 2016 and December, 2016 the witness had been undergoing continuous check-ups at the hospital and could not have appeared for giving evidence. Ld. counsel for the Respondent submits that the matter is almost two decades old and despite repeated opportunities, the Plaintiff has not led evidence, leading to a complete delay in the adjudication of the suit.

4. The Court has perused the order sheet and sees that on several occasions, the witnesses have, in fact, been present, however, there is no doubt that thereafter, due to whatever reasons, the witnesses have not appeared to tender their evidence. The medical record shows that the second witness was suffering from some heart condition and thus, the application cannot be outrightly rejected.

5. Considering the facts and circumstances of this case, this Court is of the opinion that one final opportunity ought to be granted to the Plaintiff to lead and conclude its evidence. Accordingly, both the witnesses shall appear before the Trial Court and their examination-in-chief and cross-examination shall be recorded on two continuous dates. In addition to the costs of Rs. 10,000/-, imposed vide the impugned order dated 28th October, 2016, further costs of Rs. 10,000/- shall also be paid to the Respondent. The entire costs shall now be paid on or before the next date before the Trial Court. Ld. counsel submit that the next date before the Trial Court is in May. Considering the antiquity of the matter, it is directed that the parties shall appear before the Trial Court on 12th February, 2020 at 2 PM, to enable the Plaintiff to pay the costs and for recordal of the examination-in-chief and cross-examination of the Plaintiff's witnesses.

6. Let a copy of this order be communicated to the ld. ADJ-02, Tis Hazari Courts (Central) where CS No. 16263/2016 titled *Mohd. Anees v.*

Mohd. Samy & Ors. is pending, for giving effect to this order.

7. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH, J.

JANUARY 08, 2020/MR