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

+ **CM(M) 1447/2018 and CM APPL. 49970/2018**

MOHD SHAFEEQ & ANR

..... Petitioners

Through: Mr. M. Mohsin Israky and Mr. M. Saif Islam Israky, Advocates (M: 9711581097).

versus

YOGESH KUMAR VERMA & ANR

..... Respondents

Through: Mr. Suresh Agarwal, Advocate (M: 9811140995).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **07.01.2020**

1. The Petitioners are the Defendants (*hereinafter* 'Defendants') in the suit for possession filed by the Respondents/Plaintiffs (*hereinafter* 'Plaintiffs'). The Defendants impugn the order dated 15th October, 2018 passed by the Id. Trial Court by which the court has dismissed an application seeking reopening of the Defendants' evidence and right to cross examine the Plaintiffs' witnesses.

2. Vide order dated 1st February, 2018, in CM(M) 414/2017, this Court had given one opportunity for examining the remaining witnesses as per the list already submitted subject to payment of costs. The operative portion of the said order reads as under: -

"6. Having heard both sides and having gone through the record, though it appears that the defendant have tried to cause intentional delay to the proceedings, given the nature of dispute, this court is inclined to grant one more indulgence, though subject to suitable

terms.

7. Thus, it is directed that the petitioner will be entitled to cross-examine Yogesh Kumar Verma (PW-1) in the trial court on the date to be fixed for such purposes by the trial judge, subject to payment of costs of Rs.20,000/-. For availing said opportunity, the costs will have to be paid in advance. It shall be the responsibility of the petitioner to arrange the presence of his counsel, duly briefed, ready to conduct the proceedings on the first call of the case. After the said witness (PW-1) has been cross-examined, the trial judge shall take the case to the stage of defendants' evidence, wherein one more opportunity shall be granted to the petitioner (the defendant) for examining his remaining witnesses as per the list statedly already submitted.

8. Needless to add, if the number of witnesses is such as cannot reasonably be expected to be examined in one-go by the trial court, more than one date of hearing for such purposes may have to be fixed. But then, for this, it is the trial judge who shall take a call. Defendant will not raise any objection if the trial judge fixes only one date of hearing for examination of all the defendants' witnesses.

9. The impugned order to the extent thereby right of the petitioner for adducing evidence in defence and cross-examination of the plaintiffs' witness was curtailed stands set aside accordingly."

3. Subsequent to this order, on 22nd March, 2018, the Id. Trial Court directed placing on record a copy of the High Court order and thereafter on 14th August, 2018, the Id. Trial Court has closed the right of the Defendants to cross examine and adjourned the matter for Defendants' evidence to 31st October, 2018. This order was sought to be recalled by moving an application which was also dismissed by the trial court.

4. Ld. counsel for the Defendants submits that the certified copy of the

High Court order was placed on record and on 14th August, 2018 the only reason why the evidence could not continue was because the counsel was suffering from fever. He seeks to support this submission by relying upon the court diary of the counsel and by mentioning that all the three matters which the counsel had on the said date were adjourned due to counsel's illness.

5. After the filing of the present petition, on 30th November, 2018, the ld. Trial Court is stated to have closed the right of the Defendants to lead evidence.

6. At the time of admission of this case on 25th February, 2019, subject to deposit of costs, the impugned order was stayed.

7. Ld. counsel for the Plaintiffs submits that the Defendants continue to delay the proceedings as was observed in the order dated 1st February, 2018 and till date, the Defendants have not pursued the case with diligence. The suit has been filed for possession by the Plaintiffs, the adjudication of which has been held up because of the conduct of the Defendants.

8. After perusing the earlier orders passed by this Court and the orders passed by the ld. Trial Court, there is no doubt that the conduct of the Defendants is not *bonafide*. However, on 14th August, 2018 it appears that the ld. counsel for the Defendants was indeed unwell which is borne out from the case diary and the order sheets of the said counsel's other cases which were listed on the said date. The client ought not to be made to suffer on this count.

9. Under these circumstances, subject to payment of further costs of Rs.10,000/-, the Defendants are permitted to cross examine the Plaintiffs' witnesses and lead the evidence of two of its witnesses whose affidavits are

already stated to be on record. The permission is being granted strictly in terms of the order dated 1st February, 2018. The costs which have already been deposited of Rs. 20,000/- before the ld. Trial Court shall be released to the Plaintiffs. The further costs of Rs. 10,000/- shall be paid on the first date when the cross examination of Mr. Yogesh Kumar Verma, PW1 is listed. After PW1's cross examination, the evidence of Mr. Harish Arya and Mr. Yameen Shah who are the witnesses of the Defendants, whose affidavits in evidence are stated to be on record, shall be led. The ld. Trial Court shall ensure that no adjournments are granted to the Defendants.

10. The petition with all pending applications is disposed of in these terms. *Dasti*.

PRATHIBA M. SINGH, J.

JANUARY 07, 2020
MR