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

+ **CM(M) 1443/2018 & CM APPL. 49953/2018**

M/S FIITJEE LTD

..... Petitioner

Through: Mr. Mukesh M. Goel, Advocate.
(M:9810910312)

versus

SHIKHA MALHOTRA

..... Respondent

Through: Mr. Kumar Utkarsh, Advocate.
(M:9662778086)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.01.2020

1. The grievance in this petition is that the Petitioner-Management has not been given an opportunity to cross-examine the Workman Witness-WW1. Ld. Counsel for the Petitioner submits that no opportunity was given to the management, and because the management moved an application under Order VII Rule 11 CPC, the cross-examination itself was closed and the witness was discharged. The further challenge is to the fact that the application under Order VII Rule 11 CPC has also been rejected, though the Petitioner has raised a valid ground that the Respondent is not a workman under the Industrial Disputes Act, 1947. The said application under Order VII Rule 11 CPC was not taken on record.

2. A perusal of the order sheet shows that on 19th April, 2018, issues were framed in the matter. One of the issues framed is as to whether the Respondent is a workman or not. The matter was listed on 8th August, 2018, on which date the Respondent/ Workman sought an adjournment. On 12th

October, 2018 the ld. ADJ records that the WW1 was examined and discharged. The matter was put up for management evidence on 26th October, 2018. On 26th October, 2018, an application was presented under Order VII Rule 11 CPC which, according to ld. Counsel for the Petitioner, was not taken on record.

3. After considering the matter and the advanced stage of the proceedings before the trial court, this court is of the opinion that the objection as to whether the Respondent-Workman is in fact a workman under Section 2(k) of the Industrial Disputes Act ought to be adjudicated finally after evidence is led by the parties. The filing of the application under Order VII Rule 11 CPC at this late stage has in fact derailed the final adjudication. It is noticed that since 2018, despite issues being framed in the matter, the same has been unnecessarily delayed. The Petitioner shall be given an opportunity to cross-examine WW1 who has been discharged without cross-examination, according to ld. Counsel for the Petitioner subject to payment of Rs.15,000/- as costs to the Respondent.

4. List before the ld. ADJ on the next date, when cross-examination shall be concluded without seeking any adjournment. Immediately thereafter the Management evidence shall be led expeditiously. No adjournments for leading the Management's evidence shall be granted to the Petitioner.

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

PRATHIBA M. SINGH, J.

JANUARY 13, 2020

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