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

Date of decision: 29.11.2023

+ CM(M) 890/2023 & CM APPL. 28445/2023

NARESH AGGARWAL & ORS. Petitioners

Through: Mr. Rahul Sharma and Mr. Anurag Singh, Advocate

versus

VIRENDER DHAKA & ORS. Respondents

Through: R-1 in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 28.03.2023 passed by ADJ, North West, District Courts Rohini, Delhi ('Trial Court') in CS DJ 78366/2016, titled as **Virender Dhaka v. Naresh Aggarwal & Ors.**, dismissing an application filed by the Petitioner herein under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') seeking an opportunity to cross examine plaintiff witness-2 ('PW-2').

1.1. The Petitioner No.1 herein is the defendant no.1 and the Respondent No.1 is the plaintiff before the Trial Court.

2. The learned counsel for the Petitioner states that the matter was listed for cross examination of PW-2 on 20.09.2022, however, the Petitioner's counsel was unable to remain present at the first call as she was appearing



before the High Court. He states that a pass over was sought on the said date. He states that immediately, on the same day, an application was filed seeking recall of PW-2 which has been dismissed by the Trial Court vide impugned order dated 28.03.2023.

2.1 He states that he represents each of the defendants i.e., defendant nos. 1 to 8 before the Trial Court. He states that the defendant nos. 1 to 8 do not wish to lead any evidence. He states thereafter matter can be set down for arguments.

2.2 He states that he is only seeking a limited right to cross examine PW-2 on the next date of hearing before the Trial Court i.e., 08.01.2024. He states that he is willing to pay legal costs to the plaintiff for the delay caused in concluding the cross examination of PW-2.

3. The plaintiff i.e., Respondent No.1 is present in person.

3.1 He states that PW-2 is terminally ill and is undertaking treatment. He states that he is unable to confirm if PW-2 will be available to complete her cross examination on 08.01.2024.

3.2 He, further, states that in views of the provisions to order XVII Rule 2 CPC, the grounds furnished by the counsel for the Petitioner for seeking an adjournment on 20.09.2022 was without any merits and therefore, the Trial Court rightly closed his right to lead evidence.

3.3 He states that the application for recall was filed belatedly on 09.01.2023 and the counsel for the Petitioner has wrongly stated that the said application was filed on the same day.

3.4 He states that the Petitioner counsel has sought an adjournment on 20.09.2022 and not a pass-over as contended before this Court.

4. This Court has considered the submissions of the counsel for



Petitioner and the plaintiff who is present in person.

5. The Respondent No. 1 is correct in contending that the request of adjournment on account of the unavailability of the counsel on 28.03.2023 was rightly declined by the Trial Court as per Order 17 CPC. The submission of the Respondent No. 1 that application for recall was filed belatedly on 09.01.2023 is also borne out from the record.

6. This Court is of the opinion that the Petitioners should be granted a last opportunity to cross examine PW-2 subject to payment of costs of Rs. 35,000/- to Respondent No.1 i.e., plaintiff before the Trial Court on 08.01.2024.

7. It is made clear that if the Petitioners defaults in making payment of costs and/or fails to cross examine PW-2 on the date fixed by the Trial Court, the opportunity granted by this order shall stand revoked and the order dated 28.03.2023 shall come into operation.

8. In case, PW-2 cannot remain present in Court on 08.01.2024 on account of her illness, the learned Trial Court is requested to fix a date as per the convenience of PW-2.

9. The Petitioner is bound down to the statement that no evidence is to be led on behalf of defendant nos.1 to 8 and that the Petitioner will not seek any adjournment before the Trial Court and ensure the conclusion of the cross examination of PW-2 and expeditious disposal of the suit.

10. With the aforesaid directions, the present petition stands disposed of.

11. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 29, 2023/msh/sk