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

% Judgment delivered on: 25.05.2023

+ CM(M) 901/2023

RAM NIWAS

..... Petitioner

versus

RAJNI SINGHAL & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ajeet Shukla, Advocate

For the Respondent : Mr. Nishad L.S., Advocate for R-1.
Mr. Dhruv Tamta, Advocate for R-2/MCD.
Mr. Noor Alam, Advocate for R-5 to 10.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 28673/2023

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

CM(M) 901/2023 & CM APPL. 28762/2023 (Stay)

3. The petitioner challenges the order dated 11.04.2023 passed in CS



DJ No. 9559/2016 titled *Rajni Singhal vs. MCD & Others*, whereby the learned Trial Court had passed certain directions to the parties to appear before the Local Commissioner for recording of evidence in a particular manner.

4. Learned counsel appearing for the parties before this Court are *ad idem* on the observations and some of the directions made by the learned Trial Court in the second paragraph of second page of the impugned order whereby the following directions have been noted:-

“It is made clear that on every date of proceedings, the Local Commissioner shall ascertain the witness who is required to be examined on the next date and in case said witness is not available, the right to examine/ cross examine such witness shall automatically be closed. After examining all the witnesses by defendant no.10, defendant no.4 shall examine his witnesses.” (emphasis supplied)

5. The language as employed by the learned Trial Court so far as the closing of the right of cross-examination if any witness is not available, appears to be erroneous. It is not possible to countenance the fact that where, if a witness of party A is not appearing, the right of cross-examination of party B shall be automatically closed. In fact if the witness of party A does not appear, examination of such witness shall be closed.

6. The aforesaid portion shall stand expunged from the impugned order and the same now shall be read as under:-

The Local Commissioner after ascertain the witness of a party to be examined and shall permit the other side to cross-examine such witness. In case the party,



which is under law, directed to produce the witness fails to do so, the right to produce such witness subsequently shall stand closed. This condition shall however be subject only to extreme medical emergencies or extenuating and compelling circumstances.

7. The other directions contained in the impugned order shall be retained.

8. In view of the aforesaid directions, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 25, 2023

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