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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 10.08.2023

+ CM(M) 1279/2023 & CM APPLs. 40885-86/2023

SH MOOLCHAND KHARAITI RAM HOSPITAL AND
 AYURVEDIC RESEARCH INSTITUTE Petitioner

Through: Mr. Gaurav Bahl, Advocate.

versus

SHRI GYAN SINGH Respondent

Through: Mr. Kamal Kant Tyagi, Advocate
 (through VC).

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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):

CM APPL. 40886/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1279/2023 & CM APPL. 40885/2023

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 25.07.2023 and 27.03.2023 passed by the POIT-01, Rouse Avenue Courts, New Delhi ('Trial Court') in O.P. No. 21/2019 titled as "**Moolchand Kharaiti Ram Hospital v. Gyan Singh**".

1.1. The Trial Court *vide* order dated 27.03.2023 closed the right of the



Petitioner herein to lead evidence of its second witness Mr. KK Pandey in view of the fact that the witness had not remained present on the last two dates of hearing prior thereto.

1.2. The Trial Court *vide* order dated 25.07.2023 dismissed the application filed by the Petitioner for recall of the order dated 27.03.2023.

2. The learned counsel for the Petitioner states that the Petitioner seeks a last opportunity to lead evidence and undertakes that Mr. KK Pandey will remain available before the Court on 14.08.2023 (i.e., the next date of hearing) and any subsequent date fixed by the Trial Court for cross examination until the witness is discharged.

3. In reply, the learned counsel for the Respondents states that the Petitioner herein has not complied with successive orders of the Trial Court.

3.1. In this regard, he more specifically refers to the order dated 15.07.2022 and 10.10.2022 whereby, the Trial Court after taking note to the fact that the witness of the Petitioner was unavailable, the Trial Court had imposed costs of Rs. 700 and Rs. 2,000 respectively. He states that the Petitioner herein has failed to deposit the said costs.

3.2. He states that further the order sheet would disclose that the second witness Mr. KK Pandey remained unavailable for his cross examination on several dates starting from 03.03.2023.

3.3. He states that therefore, the impugned orders do not suffer from any infirmity. He states that, however, with a view to not delay the trial he is willing to concede that the Petitioner herein be granted an opportunity to lead the evidence of the witness subject to exemplary costs of Rs. 1 lakh.

4. In response, the learned counsel for the Petitioner states that to his knowledge the costs of Rs. 700 imposed *vide* order dated 15.07.2022 have



been deposited. He states that the receipt of the deposit of the said costs will be filed before the Trial Court on or before 14.08.2023.

5. This Court has considered the submissions of the parties and perused the order sheet of the Trial Court dated 09.09.2022, 15.07.2022, 10.10.2022, 03.03.2023 and 27.03.2023. This Court finds no infirmity in the impugned orders of the Trial Court in fact or in law.

6. However, since the Petitioner herein is now giving an undertaking that he will ensure the presence of his witness and not seek any adjournment this Court deems it appropriate to grant an opportunity to the Petitioner to lead the evidence of Mr. KK Pandey subject to payment of costs of Rs. 50,000/-; out of which Rs. 25,000/- will be paid to the Respondent and Rs. 25,000/- be deposited with Delhi Legal Services Authority ('DLSA').

7. It would be in the interest of justice that the evidence of the Petitioner is placed on record, so that the claims of the Respondent are decided on merits.

7.1. The proof of payment of costs imposed by this order and the orders dated 15.07.2022 and 10.10.2022 will be placed before the Trial Court on or before 14.08.2023.

8. With the aforesaid directions, the present petition is allowed.

MANMEET PRITAM SINGH ARORA, J

AUGUST 10, 2023/msh/asb

Click here to check corrigendum, if any