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

Date of decision: 18.09.2023

+ CM(M) 1517/2023

GIRISH KAPOOR

..... Petitioner

Through: Mr. Priyank Sharma, Advocate

versus

ROOP KISHORE RASTOGI & ANR.

..... Respondents

Through: Ms. Sonal Sinha, Advocate for R-1

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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. 48179/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1517/2023

1. This petition filed under Article 227 of the Constitution of India, impugns the order dated 05.06.2023 passed by ARC-02, (Central), Tis Hazari Courts, Delhi ('Trial Court'), in RC ARC No. 993/2018, titled as ***Sh. Roop Kishore Rastogi v. Sh. Sanjeev Mathur***, dismissing the application filed by the Respondent seeking permission to recall Plaintiff Witness-1 ('PW-1') and further to cross examine the said witness.

2. The learned counsel for the Petitioner states that the Petitioner undertakes that if the petition is allowed and PW-1 is recalled, he will



complete the cross examination on the first date of hearing itself.

2.1. He states that no prejudice will be caused to the witness, since vide the order dated 05.06.2023, the application filed by the Respondent No. 2 under Order IX Rule 7 of the Code of Civil Procedure, 1908 ('CPC') has been allowed and the same witness (i.e., PW-1) will have to step into the witness box to enable Respondent No. 2 to further cross examine the said witness.

3. In reply, learned counsel for the Respondent No. 1 states that the application filed by the Petitioner is bereft of any reasons, which would justify recalling PW-1. He states that PW-1 was cross examined and discharged by the Petitioner herein on 03.08.2022.

3.1. He states that Petitioner herein is an unauthorized sub-tenant in the premises and has in the eviction proceedings earlier as well, sought to delay them by refusing to accept service.

3.2. He states that opportunity, if any, be granted to the Petitioner subject to payment of exemplary costs.

4. This Court has perused the petition and impugned order.

5. This Court agrees with the submissions of the counsel for the Respondent that the Petitioner has failed to make out any just grounds for recalling the witness PW-1. However, considering the fact that the said witness will be stepping into the witness box for cross-examination on behalf of RW-2, the Petitioner herein is granted one (1) final opportunity to cross examine the witness on the following terms and conditions: -

(a) The Petitioner shall pay cost of Rs. 25,000/- to Respondent No. 1 on or before 22.09.2023 before the Trial Court. No extension of time will be granted for payment of costs.

(b) The Petitioner will cross examine PW-1 on the date as fixed by the



Trial Court, before Respondent No. 2 initiates the cross examination.

(c) The Petitioner herein will not seek any adjournment before the Trial Court on the date fixed for the cross examination of PW-1 and it is made clear that if the Petitioner seeks an adjournment, none will be granted an opportunity today shall stands closed.

(d) The further cross-examination of PW-1 will be concluded on the same date by the Petitioner.

6. The aforesaid directions have been passed with the consent of the parties.

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

8. Pending application stands disposed.

9. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 18, 2023/rhc/sk

[Click here to check corrigendum, if any](#)