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

Date of decision: 08.11.2023

+ CM(M) 1831/2023, CM APPL. 57973/2023 & CM APPL. 57974/2023

AJAY KUMAR Petitioner

Through: Mr. Amit Sharma, Advocate

versus

MS. SONI GARG & ORS. Respondent

Through: Mr. Hitesh Kumar and Mr. Ravinder Malik, Advocates

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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 03.08.2023 passed by ADJ-04, North West, Rohini Courts, Delhi ('Trial Court') in CS No. 504/2021, titled as **Ms. Soni Garg v. Kanshi Ram Lakshmi Chand & Ors.**, whereby the Trial Court declined to take on record the written statement of the defendant no.2 i.e., Petitioner herein and closed his opportunity to cross-examine PW-1.

1.1. The Petitioner herein is the defendant no.2 and the Respondent No.1 is the plaintiff before the Trial Court.

2. The learned counsel for the Petitioner states that at the outset that he is withdrawing his challenge to the order dated 03.08.2023 to the extent it



declines to take the written statement of the Petitioner on record.

3. The said statement is taken on record and the Petitioner is bound down to the same.

4. In this petition, learned counsel for the Petitioner states that the Petitioner is merely seeking to challenge the order dated 03.08.2023, in so far as the Petitioner was not granted the opportunity to cross examine plaintiff witness-1 ('PW-1'). He states that in law, the Petitioner herein despite being set ex-parte has a limited right to cross examine PW-1 on the legal objections to the claims. He admits that the Petitioner cannot put his defence to the witness as his written statement is not on record.

5. The learned counsel for the Respondent No.1 i.e., the plaintiff states that he has no objection if the Petitioner is granted a last opportunity to cross-examine in accordance with law to the limited extent, subject to payment of costs.

6. Accordingly, with the consent of the parties, it is directed that the Petitioner herein will pay costs of Rs. 10,000/- to the Respondent No.1 on or before 09.11.2023 before the Trial Court. The PW-1 shall remain present before the Trial Court on 09.11.2023 and the Petitioner herein will cross examine PW-1 only to the limited extent of the legal objections as well as to test the veracity of the claim raised in the plaint on the basis of the record filed by the plaintiff. It is made clear that the defendant will not be entitled to put his defence to the witness in form of suggestions which in opinion of Trial Court would amount to presentation of defendant's case.

7. It is directed that the evidence will be recorded before the learned Trial Court.

8. The Petitioner further undertakes that he will complete cross



examination of PW-1 in maximum two (2) dates of hearing. The said statement is taken on record and he is bound down to the same.

9. It is made clear that if the Petitioner fails to avail this opportunity and concluded the cross examination in a time bound manner, the right of the Petitioner shall stand closed in terms of the order dated 03.08.2023 and the Trial Court will be at liberty to proceed to hear final arguments.

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

NOVEMBER 8, 2023/msh/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any