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

+ CM(M) 245/2023, CM APPL. 7309/2023--stay

PRAKASH LAL SINCE DECEASED THROUGH LR Petitioner

Through: Mr. Shaju Francis, Adv.

versus

HITESH ARORA & ORS. & ORS. Respondents

Through: Mr. Gaurav Kumar Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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05.04.2024

1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 22.12.2022 passed by Additional District Judge, South-West District, Dwarka Court, Delhi ("Trial Court") in CS No. 572/2017 titled as "*Hitesh Arora v. Pakash Lal & Ors.*" whereby the learned Trial Court while dismissing the application for adjournment, moved by the petitioner herein closed the opportunity of petitioner's defendant evidence.

2. Petitioner herein is the defendant before the learned Trial Court.

3. It is submitted that respondent no. 1 filed a suit for partition of residential property bearing municipal No. B-40, Shanker Garden, New Delhi- 110018 in 2017. For over 12 dates respondent no. 1 examined witnesses. In the meantime, erstwhile petitioner herein died on 05.12.2018 and his legal representatives were brought on record. Subsequently, vide order dated 03.09.2019 petitioner's application to place on record miscellaneous documents found after the death of the erstwhile petitioner was moved and case was adjourned for commencement of defendant evidence.



4. It is submitted that vide order dated 15.10.2022, the learned Trial Court adjourned the matter to 22.12.2022 as the court was on short leave. Subsequently, on 22.12.2022 an application for adjournment was filed by the counsel for petitioners on the ground that the LR's of the erstwhile petitioner are stuck in Calcutta for a case, nonetheless, the learned Trial Court passed the impugned order dated 22.12.2022.

5. It is submitted on behalf of the petitioner herein that only four witnesses as per the list of witnesses are to be examined i.e., the defendant, his mother and two of his relatives.

6. It is submitted by the counsel for respondent that he has no objection if an opportunity is granted to the petitioner herein to conduct defence evidence subject to payment of cost.

7. In view of the prevailing circumstances, only two opportunities shall be granted to the petitioner herein to examine the entire witnesses in his defence, subject to the cost of Rs. 20,000/- to be paid before the learned Trial Court on the next date fixed. The evidence affidavit of the four witnesses shall be filed before the learned Trial Court within 10 days. Advance copy be furnished to opposite side.

8. The learned Trial Court is hereby directed to fix two dates for leading the defendant evidence. Early dates be given as per convenience of learned Trial Court.

9. With the aforesaid observations, the petition along with pending application stands disposed of.

SHALINDER KAUR, J

APRIL 5, 2024/ SU