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

+ **CM(M) 1906/2024**

PARAG JAIN

..... Petitioner

Through: Mr. A. K. Singla, Sr. Adv. with Mr.
Sudhir Sukhija, Adv.

versus

SMT PUSHPA AGGARWAL

..... Respondent

Through: Mr. Vilas Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

19.02.2024

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CM APPL. 9973/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 1906/2024, CM APPL. 9974/2024--stay

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 07.02.2024 passed by the learned JSCC/ASCJ/GJ, Shahdara, Karkardooma Court, Delhi (hereinafter referred to as “Trial Court”) in Civ. Suit No. 8804/16 titled as “Pushpa Aggarwal vs. Parag Jain”, whereby the application moved on behalf of the petitioner herein under Order XVIII Rule 17 Code of Civil Procedure, 1908 (“Code of Civil Procedure, 1908”) read with Section 151 CPC for getting his cross-examination completed, was dismissed.



4. Learned senior counsel on behalf of the petitioner submits that the petitioner herein i.e. defendant before the learned Trial Court is a senior citizen and was in the witness box while his right to further cross-examination of the plaintiff was closed thereby closing the defence evidence of the petitioner herein vide order dated 01.11.2023. Thereafter, the petitioner moved application under Order XVIII Rule 17 CPC before learned JSCC/ASCJ/GJ, Shahdara, Karkardooma Courts, Delhi, which was dismissed vide impugned order dated 07.02.2024. It is submitted that the defendant is the only witness, which is to be examined in the defence of the petitioner, apart from that, no other witness is to be examined. It is submitted that documents in respect of which further cross-examination was to be conducted i.e. statement of bank account has already been placed on the Trial Court record and the copy has been furnished. It is further submitted that in these circumstances, impugned order dated 07.02.2024 be set aside.

5. Submissions have been strongly controverted on behalf of the respondent by submitting that the learned Trial Court had granted various opportunities to the petitioner to bring the said document on record so that the cross-examination could be completed, however, on some dates of hearing, either the witness was not present or the documents were not produced, therefore, the trial got delayed. Moreover, adjournment was granted by the learned Trial Court vide order dated 28.07.2023 and the case was adjourned to 09.08.2023, subject to cost of Rs. 5,000/-. The said cost has not been tendered yet. It is further submitted that the conduct of the petitioner has been motivated by the intention of delaying the trial of the case, therefore, there is no illegality in the impugned order.



6. Apart from hearing the arguments, the record, impugned order as well as the orders by the learned Trial Court on various dates have been perused.

7. Having considered the aforesaid submissions and in the interest of justice, defendant is one last opportunity for his entire evidence to be recorded on 11.03.2024, which is already the date fixed before the learned Trial Court, subject to payment of cost of Rs. 10,000/-. In addition, petitioner shall also pay previous cost of Rs. 5,000/-, which was imposed upon the petitioner vide order dated 28.07.2023. No other date beyond 11.03.2024 shall be given by the learned Trial Court for concluding the evidence of the petitioner.

8. With these observations, petition stands disposed of.

SHALINDER KAUR, J.

FEBRUARY 19, 2024/ss