



\$~23

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

+ CM(M) 509/2023, CM APPL. 15178/2023--stay

NEENA CHOUDHARY & ORS. Petitioners

Through: Mr. Sanjeev Kumar and Mr. Pankaj
Kashyap, Advs.

versus

DEVINDER CHOWDHARY Respondent

Through: Mr. Narveer Dabas, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

05.03.2024

%

1. The present petition under Article 227 of the Constitution of India read with Section 151 Civil Procedure Code (hereinafter referred to as “CPC”) has been filed impugning the order dated 21.02.2023 passed by the learned ACJ-CCJ-ARC, (hereinafter referred to as “Trial Court”) Shahdara, Karkardoom Courts, Delhi, in SC No.1797/2016 titled as “*Devinder Kumar Chaudhary vs. Neena Chaudhary & Ors.*”, whereby the application moved on behalf of petitioner herein under Order XVIII Rule 17 read with Section 151 Civil Procedure Code (hereinafter referred to as “CPC”) to recall PW-1 for cross-examination was dismissed. The petitioners herein are the defendants and the respondent is the plaintiff before the learned Trial Court.
2. The respondent herein had filed a suit for recovery of possession and declaration against the petitioners herein with respect to the suit property i.e. Flat No. 275 B, LIF Flats, Pocket E, GTB Enclave, Delhi in 2015.
3. Thereafter, the written statement was filed by the petitioners and the



respondent filed replications to the written statement. Subsequent thereto, the learned Trial Court framed the issues and listed the matter for 22.08.2017 for recording of evidence of respondent

4. It is submitted on the said date part evidence of PW-1 was recorded and remaining evidence was deferred for next date of hearing i.e. 07.06.2022 on which date the associate counsel for the petitioners requested for an adjournment before the learned Trial Court as the main counsel was unavailable. Consequently, learned Trial Court closed the right of the petitioners to cross-examine PW-1. It is also submitted that on previous occasions adjournments were granted due to the reasons that the Court could not function either due to non-availability of proper staff or because of the Covid pandemic outbreak.

5. The learned counsel for respondent submits that at this stage, since it is the respondent being the plaintiff, who is a senior citizen suffering from past one year and that he is also suffering due to the injunction order passed by this Court therefore, in these circumstances, the respondent has no objection in case the petitioners herein are afforded one opportunity for cross-examination PW-1 subject to cost.

6. Arguments heard and impugned order has also been perused.

7. In view of the submissions made by both the parties, only one opportunity is afforded to the petitioners to cross-examine PW-1 on the next date of hearing before the learned Trial Court which is 21.03.2024 and petitioners are directed to try to conclude the cross-examination on the same date. In case, the cross-examination is lengthy, one more opportunity within two weeks be granted to the petitioners as per the convenience of the learned Trial Court for concluding the cross-examination of PW-1. Liberty is



granted subject to cost of Rs. 3,000/- to be given to the respondent on the next date of hearing before the learned Trial Court.

8. With above observations, the present petition along with pending applications stands disposed of.

SHALINDER KAUR, J.

MARCH 5, 2024
SDS