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

+ CM(M) 632/2022, CM APPL. 29756/2022--stay

**SURESH CHAND MAMGAIN & ANR.** ..... Petitioners

Through: Mr Sanjeev Sagar St. Counsel  
(DHCLSC), Ms. Nazia Parveen and  
Mr. Diwan Singh Chauhan,  
Advocates.

versus

**SHIVA NAND** ..... Respondent

Through: Mr. Vinod Pal and Mr. Ravinder  
Sharma, Advocates.

**CORAM:**  
**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**  
**02.04.2024**

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1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 30.05.2022 passed by the learned Additional District Judge-02 (Shahdara), Karkardooma Courts, Delhi, in 29 CS No. 1364/2016 titled as "*Shiva Nand vs. Suresh Chand Mamguai*", whereby the learned Trial Court refused the request for adjournment and closed the evidence of the petitioners. The petitioners herein are the defendants before the learned Trial Court.
2. In response to the present petition, the learned counsel for the respondent has filed reply challenging the submissions made in the petition.
3. The learned counsel for the petitioners submits that on 04.06.2015,



the respondent initiated a suit seeking possession, permanent injunction and mesne profits/damages against the petitioners. Thereafter, the respondent moved an application under Order 12 Rule 6 CPC which was allowed by the learned Trial Court vide judgment dated 22.08.2017. The petitioners preferred an appeal before this Court bearing RFA No. 1020/2017 against the said judgment. Vide order dated 4.12.2017, this Court set aside the judgment dated 22.08.2017 and granted three opportunities each to both the parties to complete their evidence in affirmative. Further, this Court was of the opinion that if one of the parties fails to complete their evidence in three opportunities, with maximum one more grace opportunity, then the evidence of the said party will be closed.

4. Further, the learned counsel submits that despite the directions of this Court only two effective opportunities were granted to the petitioners to lead and conclude defence evidence. The first opportunity was granted on 09.02.2022, however due to Covid period, the witness could not be examined on that date and the matter was renotified for 30.05.2022. On the said date of hearing, the learned Trial Court closed the right of the petitioners to lead defence evidence, despite the fact the petitioners had filed the list of witnesses on that date. Additionally, adjournment requested on behalf of the petitioners was also denied by the learned Trial Court.

5. It is submitted by the learned counsel that although he initially wanted to examine thirteen witnesses, he has decided to forego the two witnesses as mentioned in the list of witnesses. Instead, now he wishes to examine the witnesses i.e. the petitioners before this Court, brother of petitioner no. 2 and eight officials from various government departments as the presence of these witnesses is necessary to prove the possession of the petitioners in the suit



property. It is further submitted that in such circumstances the impugned order be set aside and the petitioners be afforded an opportunity to summon the witnesses.

6. Controverting the submissions made on behalf of petitioners, the learned counsel for the respondent submits that the present petition is an abuse and misuse of process of law. The petitioners have failed to show any illegality or perversity in the impugned order whereby the learned Trial Court after taking into consideration, the opportunities granted to the petitioners to lead the defence evidence has subsequently closed their right to do so.

7. It is further submitted that the list of witnesses was not filed at the appropriate time but rather on 30.05.2022, when the petitioners were required to summon the witnesses. Moreso, the copy of the affidavit along with the list of witnesses has not been furnished to the respondent. It is submitted that the main purpose of the petitioners is to delay the proceedings before the learned Trial Court and to retain the unlawful possession over the suit property.

8. Apart from hearing the arguments, the record as well as impugned order have been perused. On 08.12.2021, the respondent's evidence was closed and the matter was renotified for 09.02.2022 for recording the evidence of the petitioners. On the said date of hearing, the learned Presiding Officer had conducted the proceedings through video-conferencing due to the Covid pandemic and the matter was listed for 30.05.2022.

9. The learned Trial Court closed the evidence of the petitioners vide impugned order dated 30.05.2022, as they failed to furnish the evidence



affidavit of DW1 Mr. Suresh Chand to the respondent and took no steps to summon the witnesses.

10. The objective of procedural law is to ensure administration of justice and the interpretation should always aim to do substantial justice between the parties. As it is trite that all the rules of procedure are handmaid of justice and cannot defeat the substantive right provided that the other party can be well compensated in terms of order of cost.

11. Having considered the submissions, the impugned order dated 30.05.2022 is set aside and the petitioners are afforded two opportunities to conclude the entire evidence. The date for this is to be fixed by the learned Trial Court as per its convenience keeping in view, that it is one of the old cases pending before it.

12. The petition is allowed subject to cost of Rs. 10,000/- to be paid to the respondent on the next date of hearing before the learned Trial Court. Further, the copy of the affidavit and list of witnesses shall be furnished to the respondent within one week from today.

13. The present petition is allowed and the pending application stands disposed of.

**SHALINDER KAUR, J.**

**APRIL 02, 2024**  
**SDS**