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

% ***Date of decision: 17th September, 2024***

+ CM(M) 1504/2023 & CM APPL. 47932/2023

OMWATI

.....Petitioner

Through: Mr. Israel Ali, Advocate

versus

DAYANAND (DECEASED) THR LRS

.....Respondent

Through: Mr. Anand Duggal, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court.
2. During course of the proceedings, she filed, *inter alia*, applications under Order VII Rule 14 CPC and under Order XVI Rule 10 r/w Section 151 CPC which were dismissed by the learned Trial Court and the dismissal of the above-said two orders is under challenge.
3. During course of the arguments, learned counsel for the petitioner/plaintiff has contended that he is presently restricting the present petition only to the extent of dismissal of application under Order XVI Rule 10 r/w Section 151 CPC.
4. Mr. Anand Duggal, learned counsel for respondent has joined the proceedings through videoconferencing.



5. Admittedly, initially, as per the list of witnesses submitted by the plaintiff, one Mr. Kishan Pal was directed to be summoned as witness of the plaintiff. However, since despite service, he failed to appear, the plaintiff moved an application seeking issuance of coercive process in terms of Order XVI Rule 10 CPC. Such request was declined by the learned Trial Court holding that there was no relevancy of the aforesaid witness.

6. It is contended by learned counsel for the petitioner that the Court had already permitted to call said Mr. Kishan Pal as witness of plaintiff and on one occasion, said witness did appear but the learned Judge was on leave that day.

7. During course of the hearing, learned counsel for respondent has also stated that he does not have any intention to delay the disposal of the suit in question, more so when he himself had filed the same and which is already at the stage of final arguments. He states that he would have no objection if said witness Mr. Kishan Pal is directed to be summoned, once again.

8. Next date before the learned Trial Court is stated to be 19.09.2024.

9. This case is one of the few oldest cases pending in District Courts.

10. Be that as it may, keeping in mind the aforesaid contentions made by the learned counsel for the parties, present petition is disposed of with the direction that learned Trial Court would issue summons afresh to aforesaid Mr. Kishan Pal and in case said witness does not appear despite due service, learned Trial Court would also be at liberty to take further action in accordance with law.



11. It is clarified that since the case is very old, a very short date may be given by learned Trial Court after ascertaining its own board position and as per convenience of learned counsel for the parties.

12. Both the sides would render due assistance to the learned Trial Court on 19.09.2024.

13. Petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

SEPTEMBER 17, 2024/dr