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

+ **W.P.(CRL) 2842/2023 & CRL. MA 26446/2023**

SMT SUDESH

.....Petitioner

Through: **Mr. Nitin Dahiya and Mr. Sushant Kumar, Advocates.**

versus

SMT DURGESH & ANR

.....Respondents

Through: **Mr. Abhir Datt and Debayan Gangopadhyay, Advocates for respondent no.1.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.10.2024

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1. By way of present petition, the petitioner seeks setting aside of the order dated 06.05.2023 passed by the learned JMFC (Mahila Court-05), Dwarka Courts, New Delhi in MC No.329/2019 and to allow the petitioner to lead her evidence as her right to lead evidence was directed to be closed.
2. Pertinently, the impugned order came to be passed in the context of the proceedings initiated by the respondents under Section 12 of the DV Act.
3. Learned Counsel for the petitioner submits that the petitioner being an old lady could not avail the opportunity. It is further submitted that the husband of the petitioner had expired on 26.06.2021 and her children are not residing with her. It is also submitted that the petitioner had changed her earlier counsel and could not procure the case files from him timely since she was unwell. Though the newly engaged counsel had sought more time from the learned Trial Court for filing evidence by way of affidavit, the same was refused. Learned counsel for the petitioner submits that only one



opportunity may be granted to the petitioner to examine herself/defence witnesses and no further opportunity will be sought thereafter.

4. Learned counsel for the respondent No.1 submits that on account of the petitioner's failure to examine herself, the learned Mahila Court had imposed a cost of Rs.3,000/- vide order dated 04.03.2023 which is still remains unpaid.

5. Considering the explanation furnished by the petitioner and the further fact that the petitioner's evidence would be required for just decision of the case, this Court is inclined to allow the present petition subject to further cost of Rs.3,000/- to be paid to the respondent No.1. The Trial Court will grant one opportunity to the petitioner to examine herself as well as any other witness in support of her case on the next date of hearing or any other date fixed by the Trial Court. The respondent No.1 would also be at liberty to cross-examine the said witnesses. The said opportunity shall, however, be subject to payment of the cost imposed by the Trial Court as well as by this Court.

6. The petition is disposed of in above terms along with pending application.

MANOJ KUMAR OHRI, J

OCTOBER 18, 2024/rd