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

% ***Date of decision: 23rd July, 2024***

+ **CM(M) 2985/2024 & CM APPL. 41013-41014/2024**

VIJAY KUMAR

.....Petitioner

Through: **Mr. Tarun Kr. Tomar and Mr. Vijay Kumar Gupta, Advocates (through VC).**

versus

MOHD. IBRAHIM & ANR.

.....Respondent

Through:

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. The plaintiff is pursuing a recovery suit before the learned Trial Court.
3. During the trial, plaintiff i.e. PW-1 Vijay Kumar entered into witness box. Earlier, various opportunities had been granted to defendant to cross-examine him but since, the cross-examination was not conducted, such right to cross-examine PW-1 was closed vide order dated 08.09.2022.
4. Thereafter, the defendant moved an application under Order XVIII Rule 17 CPC praying therein that the above order dated 08.09.2022 may be recalled and the defendants may be granted permission to cross-examine the plaintiff (PW-1).
5. Such application has been allowed by the learned Trial Court observing



that, though, there was no justifiable ground but in the interest of justice and to decide the *lis* on merits, the permission was granted subject to cost of Rs. 10,000/-.

6. Learned Trial Court also made it very clear that only one effective opportunity would be granted to defendant to cross-examine PW-1.

7. The matter is now listed before the learned Trial Court on 31st instant for such cross-examination.

8. The grievance of the petitioner/plaintiff is very limited and precise. It has been contended that the defendant had been granted several opportunities in the past but he did not choose to cross-examine the plaintiff and, therefore, in such a scenario, the Court should not have given any kind of indulgence to the defendant.

9. The attention of the Court has been drawn towards various previous orders.

10. Undoubtedly, the defendant should have been extremely watchful and circumspect during the trial and should have cross-examined the plaintiff at the first available opportunity. However, at the same time this, Court also cannot be oblivious of the fact that the endeavor of the Court should be to decide the case on merits instead of on technicalities and to also ensure that there is a level playing field for both the parties.

11. The learned Trial Court, though, was cognizant of the fact that there was no justifiable reason, yet, in the interest of justice, one last and final opportunity was granted.

12. The aforesaid order has been made by the learned Trial Court while exercising its discretionary power. I do not find any kind of impropriety and illegality in such order. On the other hand, the learned Trial Court needs to be



complemented that since it wanted to adjudicate the case on merits after giving due opportunity to both the sides, it gave one last and final opportunity in this regard while also adequately compensating the plaintiff.

13. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

14. Viewed thus, there is no merit and substance in the present petition.

15. The petition is, accordingly, dismissed in *limine*.

(MANOJ JAIN)
JUDGE

JULY 23, 2024/sw