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

% ***Date of decision: 27th August, 2024***

+ **CM(M) 3226/2024 & CM APPL. 48745-48746/2024**

BRAHM SINGH

.....Petitioner

Through: Mr. Faisal Naseem and Ms. Mahetaba
Asrar, Advocates

versus

OM PRAKASH

.....Respondent

Through: Mr. Sachin Kumar Sharma, Proxy
Counsel for Mr. Pankaj Vivek,
Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 48746/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3226/2024 & CM APPL. 48745/2024

1. Petitioner is plaintiff before the learned Trial Court and has filed suit seeking permanent and mandatory injunction.
2. Issues were framed on 01.02.2024 and thereafter the plaintiff had also filed an affidavit and has also been cross-examined by the defendant.
3. List of witnesses was also placed on record by both the sides.
4. Fact, however, remains that plaintiff did not take requisite steps for summoning his witnesses and keeping in mind the previous opportunities granted in this regard, the learned Trial Court closed his right to lead further evidence.



5. Such order dated 25.07.2024 is under challenge.
6. Mr. Sachin Kumar Sharma, learned counsel for respondent appears on advance notice and contends that though no justifiable reason has been disclosed by the petitioner herein but he would have no objection if one last and final opportunity is granted to the petitioner in this regard, subject to imposition of reasonable cost.
7. This Court has also gone through various previous orders passed by learned Trial Court. It is quite obvious that since steps were not taken to summon official witnesses nor affidavits of the private witnesses were filed, learned Trial Court was constrained to close the right to lead further evidence.
8. Learned counsel for petitioner/defendant states that the private witnesses somehow did not accede to the request of the plaintiff and claimed that they would appear before the learned Trial Court only if summons were issued to them and, therefore, he was not in a position to produce them or for that matter to file their affidavits before the learned Trial Court well-in-advance.
9. Be that as it may, keeping in mind the overall facts and circumstances of the case and also considering the concession given by learned counsel for the respondent/defendant, the present petition is disposed of with the direction that learned Trial Court would grant one last and final but effective opportunity to the petitioner/plaintiff to summon and examine all his remaining witnesses. However, for causing delay in the matter, plaintiff is burdened with cost of Rs. 10,000/- which shall be cleared before the learned Trial Court on the date fixed which is stated to be 29.08.2024.
10. In view of the above, learned Trial Court would not record the evidence of the defendant on the next date and would, instead, give suitable date (s) so



that plaintiff is in a position to summon and examine all his remaining witnesses.

11. Petition stands disposed of in the aforesaid terms.
12. Order *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

AUGUST 27, 2024/dr