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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 10th September, 2024***
+ **CM(M) 3367/2024 & CM APPL. 52727-52728/2024**

RAHUL MITTAL

.....Petitioner

Through: Mr. Visheshwar Shrivastava with
Manoj K Gautam, Advocates.

versus

ISRAEL

.....Respondent

Through: Mr. Azhar Qayum, Advocate.
(via video conferencing)

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. When his suit was taken up by the learned Trial Court on 13.05.2024, plaintiff (PW-15) was present for his further cross-examination to be conducted by the defendant but nobody appeared from the side of the defendant and the learned Trial Court observed that the said witness was examined-in-chief on 25.07.2018 and, thereafter, he was cross-examined on 18.03.2019 and, thereafter, on 14.10.2022 but the cross examination was being adjourned on one ground or the other. Keeping in mind the fact that there was no appearance from the side of defendant, the opportunity to cross-examine PW-15 was closed and resultantly, the plaintiff also closed his evidence in affirmative.
3. The case was fixed for defendant's evidence for 19.07.2024.



4. However, in between, the defendant moved an application under Section 151 CPC seeking recall of said order dated 13.05.2024.
5. Curiously, the learned Trial Court took up the said application same day and recorded in the impugned order dated 03.06.2024 that in order to cut short the controversy, there was no requirement of issuing any notice of the application to the plaintiff and without giving any notice and without even hearing the plaintiff, it recalled the above said order and gave defendant one opportunity to conclude the cross-examination of PW-15 and also appointed a Local Commissioner, without hearing the plaintiff, for recording of evidence.
6. Learned counsel for the petitioner states that after the appointment of the learned Local Commissioner, a date was also fixed for the purposes of recording of further cross-examination of PW-15 but fact remains that plaintiff was never made aware either about the filing of any such application, or recalling of the above said order or of appointment of learned Local Commissioner.
7. This Court has also seen the subsequent order dated 19.07.2024 passed by the learned Trial Court.
8. It seems that the learned Local Commissioner could not record the evidence and submitted a report. In such report the learned Local Commissioner had mentioned that the recording of evidence could not take place on account of non-cooperation of the plaintiff.
9. Resultantly, the learned Trial Court burdened the plaintiff with a cost of Rs. 20,000/- and simultaneously, directed that the evidence would now be



recorded by the Court, instead of by Local Commissioner.

10. Mr. Azhar Qayum, learned counsel for the respondent has also joined the proceedings through video conferencing.

11. It needs no discerning eyes to see that there is glaring irregularity in impugned orders.

12. On 13.05.2024, there was no appearance from the side of defendant and the learned Trial Court had closed the right of the defendant to further cross-examine the plaintiff and in such a situation, the learned Trial Court should not have disposed of the application seeking recall of the above said order, without, at least, issuing notice to the plaintiff.

13. Needless to say, a valuable right had accrued in favour of the plaintiff by the aforesaid closure of the evidence and even if the result might have been the same even after hearing the plaintiff, the learned Trial Court should not have decided the above said application in an *ex-parte* and hasty manner.

14. In view of the above, this Court finds it to be a fit case to interfere under Article 227 of the Constitution of India and resultantly, the order dated 03.06.2024 and also the subsequent order dated 19.07.2024 are hereby recalled.

15. The learned Trial Court would be at liberty to consider the above said application moved by the defendant under Section 151 CPC for recalling order dated 13.05.2024 afresh after giving due opportunity to the plaintiff and, thereafter, would proceed further with the matter in accordance with law.



16. The petition stands disposed of in aforesaid terms.
17. Order *dasti* under the signatures of Court Master.

(MANOJ JAIN)
JUDGE

SEPTEMBER 10, 2024/sw