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

% *Date of decision: 19th September, 2024*

+ CM(M) 3416/2024, CM APPL. 54753/2024 & CM APPL.
54754/2024

MD SADAB & ANR.

.....Petitioner

Through: Mr. Kartik, Advocate (Through VC)

versus

MEHTAB AHMAD SAIFI

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 54754/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3416/2024 & CM APPL. 54753/2024

1. Petitioners are defending a suit for partition.
2. They are aggrieved by the impugned orders whereby their right to lead evidence has been closed.
3. It is noticed that on 16.07.2024, there was no appearance from the side of defendants and they had not cleared the previously imposed cost. Neither counsel nor defendants were present before the learned Trial Court and, therefore, keeping in mind the fact that three opportunities had already been granted to defendants for leading their evidence which had not been availed by them, their right to lead evidence was closed.
4. An application under Section 151 CPC was moved by them praying



therein to recall the aforesaid order. It was contended that counsel was busy in some other Court and, therefore, he could not appear and in the interest of justice, such order may be recalled.

5. Fact remains that above date was not the solitary date for leading DE and, admittedly, prior to that also, three opportunities had been given to the defendants, which went begging.

6. So much so, on three different dates, cost was imposed upon the defendants but they have not even bothered to clear the same.

7. Facts placed on record suggest that the defendants merely want to delay the inevitable.

8. This Court is also conscious of the fact that petitioners have invoked supervisory jurisdiction under Article 227 of the Constitution of India and the scope of appreciation in such kind of petition is very narrow and it cannot be said that the discretion exercised by the learned Trial Court is arbitrary or shows any perversity.

9. Viewed thus, there is no merit in the present petition. Same is accordingly dismissed *in limine*.

(MANOJ JAIN)
JUDGE

SEPTEMBER 19, 2024/dr