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

% ***Date of decision: 19<sup>th</sup> September, 2024***

+ CM(M) 3423/2024, CM APPL. 54940/2024 & CM APPL. 54941/2024  
SHANTIVIJAY JEWELLERS & ANR. ....Petitioners

Through: Mr. A K Vashishtha with Mr. Rakesh  
Kr. Singh, Advocates.

versus

M/S GOYAL MODES & ANR ....Respondents

Through: Mr. Shivain Vaidialingam, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT (oral)**

1. Petitioners are defending a suit for recovery which is presently at the stage of final arguments.
2. The impugned order would indicate that it is one of the oldest cases pending in that Court, the progress of which is being monitored by the *Arrears Committee* of this Court, as the case is already twenty six years old.
3. The learned Trial Court has already listed this matter on day-to-day basis for expeditious disposal.
4. When the case was at the stage of final arguments, an application was moved by the defendants under Section 151 CPC.
5. Such application was, initially, taken up by the learned Trial Court on 02.09.2024 and was dismissed while observing that a similar attempt was made earlier also by moving an application under Order XVIII Rule 17 read with Section 151 of CPC which was, eventually, withdrawn and noticing that the application was moved again seeking similar relief, the petition was



dismissed with cost.

6. Thereafter, an application was moved by learned counsel for defendants under Section 151 CPC seeking recall of said order. Such application was also dismissed by the learned Trial Court.

7. This is how the present petition has been filed before this Court.

8. Learned counsel for petitioner states that on 03.09.2024, he could not appear before the learned Trial Court and only his associate was present and the learned Trial Court should not have disposed of the application without hearing him.

9. When asked as to whom he wanted to examine and why, learned counsel for petitioner submitted that vide order dated 02.08.2024 passed by this Court in CM(M) 916/2023, the defendants had been permitted to place on record one additional document which happens to be '*Copy of testimony of Mr. Mukund Sharan Goyal (father of plaintiff)*' and it is only in that context that he wants to examine one Mr. Subhash Barjatya.

10. According to learned counsel for petitioner, the necessity has arisen only because of the fact that the above said additional document has now been permitted to be placed on record and in order to show the relevancy of the above said document, he requires Mr. Subhash Barjatya to enter into witness box.

11. When asked, learned counsel for petitioner also, very fairly, admitted that said Mr. Subhash Barjatya was cited as witness when the list of witnesses was filed by the defendants. He also admits that the evidence of the defendants was closed way back in the year 2012.

12. That being so, there was no one to have prevented the defendants to have called and to examine Mr. Subhash Barjatya, irrespective of the fact that



the above said additional document was permitted to be placed on record later in the terms of the directions contained in order dated 02.08.2024.

13. The defendants cannot, even otherwise, be permitted to call third person for seeking some explanation about the deposition made by the other.

14. Since the case is already very old and is being heard on day-to-day basis, this Court does not find any reason to interfere with the impugned order.

15. The petition is, accordingly, dismissed.

**(MANOJ JAIN)**  
**JUDGE**

**SEPTEMBER 19, 2024/sw**