



2024:DHC:8185



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 21st October, 2024***
+ **CM(M) 3493/2024 & CM APPL. 56955-56956/2024**

SANJAY MALIK

.....Petitioner

Through: Mr. Bharat Bagga, Advocate
(Through VC)

versus

NEERU MALIK

.....Respondent

Through: Mr. Ayush Garg, Advocate (Through
VC)

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM APPL. 56956/2024 (exemption)**

Exemption allowed, subject to all just exceptions.

CM(M) 3493/2024 & CM APPL. 56955/2024

1. The grievance raised in the present petition is very short.
2. Petitioner herein is objector in a *Probate Petition* filed by Ms. Neeru Malik.
3. During the pendency of the aforesaid Probate Petition, petitioner had called one official from the Department of Archives and on said date i.e. 29.07.2024, since no one was present from the side of objector to cross-examine him, right to cross-examine him was closed, after giving due opportunity.
4. Thereafter, one application was moved from the side of such objector praying therein that one more opportunity be granted and such application has been dismissed vide order dated 21.08.2024.



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5. Such order is under challenge.
6. When asked, learned counsel for objector informed that the testimony of PW2 Mr. Naveen is very crucial and has a serious bearing with respect to the issue involved as he is the one who has brought and proved the certified copy of the *Will* from the record and being an important witness, the objector should have been given one opportunity to cross-examine him.
7. It is quite obvious from the impugned order that the cross-examination could not take place on 29.07.2024 because of non-availability of the counsel for the objector, who was stated to be busy elsewhere.
8. Though, in view of the above, this Court does not find any illegality or perversity in the impugned order, yet at the same time, keeping in mind the importance and significance of the testimony of said witness, serious prejudice might be caused to the objector, if the testimony of PW2 Mr. Naveen is permitted to go unrebutted and uncontroverted.
9. Mr. Ayush Garg, learned counsel for respondent Ms. Neeru Malik has joined the proceedings through videoconferencing and states that though there is no illegality in the impugned order and the learned counsel for the petitioner should have ensured that witness was duly cross-examined on the same day itself, it is submitted that, without prejudice to his rights and contentions, he would have no objection if one final opportunity is granted in this regard to the petitioner herein to cross-examine said witness, *albeit*, subject to imposition of heavy cost.
10. Next date before the learned Trial Court is stated to be 29.10.2024 for respondent's evidence (objector's evidence).
11. Keeping in mind the overall facts and circumstances of the case and in view of foregoing discussion, the present petition is disposed of by directing



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the learned Trial Court to give one last but effective opportunity to objector to cross-examine PW2 Naveen. However, simultaneously, the objector is burdened with cost of Rs. 15,000/- which shall be payable to the opposite side on the next date of hearing before the learned Trial Court.

12. Learned Trial Court shall, after ascertaining convenience of both the sides, would fix up the date for the purpose of recalling of said witness and it is expected that on such date, learned counsel for objector appears and cross-examines the aforesaid witness. It is clarified that objector would be entitled to only one opportunity in this regard and no further indulgence shall be given to him on such aspect in future, on any ground whatsoever.

13. Petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 21, 2024/dr