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

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

+ CM(M) 3501/2024 & CM APPL. 57136/2024 & CM APPL.
57135/2024
MAHENDER SINGH & ORS.

.....Petitioner

Through: Mr. Ashutosh Rana, Advocate.

versus

HUKAM CHAND

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner is defending a suit for declaration.
2. The issues were framed by the learned Trial Court on 25th May, 2022 and while fixing the case for plaintiff's evidence for 30th November, 2022, the learned Trial Court also directed that the *Examination-in-Chief of the witnesses would be by way of affidavit and advance copy of the same be supplied to the other side, at least 15 days prior to the next date of hearing.*
3. However, when the matter was taken up by the learned Trial Court on 31st July, 2024, the same very day, affidavit of PW2 Mrs. Rajesh was handed over to the defendant and her testimony was also recorded in relation to the abovesaid affidavit. When she was tendered for cross-examination, the learned counsel for the defendant sought time to go through the affidavit and sought adjournment for cross-examination.
4. However, such request was opposed by learned counsel for the plaintiff



on the ground that there was no law to supply advance copy of the affidavit and since the plaintiff insisted, the learned Trial Court, while observing that there was no provision for supplying any advance copy, declined such request.

5. It is in the aforesaid background that the present petition has been filed.

6. Undoubtedly, the practice of submitting affidavits, in lieu of oral deposition, so far as it related to examination-in-chief, was introduced way back in the year 2002. The idea and objective was to expedite the trial.

7. Prior to that, normally, whenever any witness used to appear for oral deposition, there also used to be cross-examination same day. Though, at times, keeping in mind the nature of request, the Court could also post-pone such cross-examination.

8. However, after the abovesaid amendment, the practice has been very consistent and the affidavits, in lieu of Examination-in-Chief, are filed with advance copy to opposite side.

9. Be that as it may, as already noticed above, when the issues were framed by the learned Trial Court, the Court had itself directed the plaintiff to supply advance copy of any such affidavit, at least 15 days prior to the next date.

10. In view of the above, it would have been appropriate if the Court would have given some time to the learned counsel for the petitioner (defendant before the learned Trial Court) to conduct cross-examination, as, admittedly, the above affidavit had been supplied same day in the presence of the Court.

11. Nobody appears on advance notice.

12. It is informed that the next date before the learned Trial Court is 20th November, 2024.



13. Keeping in mind the overall facts and circumstances of the case, the present petition is disposed of with the direction that the learned Trial Court shall provide one effective opportunity to the petitioner herein to conduct cross-examination of said witness i.e. PW2 Mrs. Rajesh.

14. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

SEPTEMBER 27, 2024/ss