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

% ***Date of decision: 15th October, 2024***

+ **CM(M) 3610/2024 & CM APPL. 60418/2024**

KRISHAN KUMAR GUPTA

.....Petitioner

Through: Mr. Amolak with Ms. Pratishttha,
Advocates.

versus

NEHA KHANNA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is pursuing a suit for recovery.
2. It was, initially, filed under Order XXXVII CPC but later on, it was converted into an ordinary civil suit.
3. After completion of pleadings and framing of issues, learned Trial Court appointed a Local Commissioner for recording of evidence of the parties on 24.01.2024.
4. Petitioner herein i.e. Sh. Krishan Kumar Gupta (plaintiff) appeared before learned Local Commissioner as PW-1. His examination could not be concluded, on few earlier occasions.
5. On 19.07.2024, learned Trial Court granted one more opportunity to plaintiff to conclude his evidence. However, it also imposed a cost of Rs.10,000/- upon him for causing delay in the matter.



6. The plaintiff was accordingly directed to appear before the learned Local Commissioner on 23.07.2024 for recording of his such evidence.
7. The plaintiff, instead, apprised the learned Local Commissioner that he would be moving an application seeking waiver of the cost and, therefore, he did not appear.
8. Fact remains that when such application was taken up by the learned Trial Court on 05.08.2024, it dismissed the above said application seeking waiver of the cost and also simultaneously closed the opportunity of the plaintiff to enter into witness box and directed that his already recorded evidence be also taken off the record.
9. Such order is under challenge.
10. Nobody appears from the side of the respondent/defendant despite service of advance notice.
11. Admittedly, the plaintiff was permitted to examine his other witnesses and has already examined such other witnesses and now PE is stated to be complete.
12. It is quite evident and apparent that the petitioner seems to have taken the things for granted. In case, he wanted to move any application seeking waiver of cost, it should have been moved well in advance. But, for the reasons best known to him, such application was moved at the last moment which seems to have invited the irk of the Court as well, particularly, keeping in view the previous opportunities which



had already been given to the plaintiff.

13. During course of the arguments, learned counsel for the petitioner submits that he, now, raises no grievance with respect to the dismissal of his application seeking waiver of cost. He, however, states that the statement of PW-1 has already been recorded in part and if one more opportunity is given, he shall ensure that the plaintiff appears before the learned Local Commissioner for the purposes of conclusion of his cross-examination.

14. It is informed that now there is no date, as such, before the learned Local Commissioner and the matter is now scheduled for further consideration before the learned Trial Court on 05.11.2024.

15. The plaintiff is stated to be a Chartered Accountant and is also appointed as a '*Resolution Professional*' and, therefore, at times, he has to go out of town and it is submitted that there was never any intent to prolong the proceedings, particularly, when it happens to be his own case whereby he himself seeks recovery.

16. Needless to say, in case the testimony of the plaintiff is expunged from the record, it would cause serious and irreparable prejudice to the plaintiff.

17. Keeping in mind the overall facts and circumstances of the case, the present petition is disposed of with direction to the plaintiff to pay the cost in terms of the order dated 19.07.2024 within one week from today. The proof thereof shall be furnished before the learned Trial



Court on the date fixed and the learned Trial Court shall, accordingly, fix up a date for his further examination before the learned Local Commissioner.

18. Needless to say, further expenses, if any, with respect to such commission shall be borne by the plaintiff himself.

19. The petition is disposed of with the aforesaid directions

(MANOJ JAIN)
JUDGE

OCTOBER 15, 2024/st