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

+ CM(M) 66/2025

SARITA DEVI & ANR.

.....Petitioners

Through: Mr. Prashant Sharma, Mr. S. C.
Sharma & Ms. Priya Sharma, Advs

versus

ASHA RAM

.....Respondent

Through: Mr. Aman Saini & Mr. Aman Batra,
Advs

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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19.02.2025

CM(M) 66/2025 & CM APPL. 2296/2025 (Interim Stay)

1. This is a petition under Article 227 of Constitution of India read with Section 115 CPC against the order dated 03.06.2024 passed by the learned District Judge-04, North West District, Rohini Courts, Delhi in *CS DJ 663/2023* titled as *Asha Ram vs Sarita Devi*.
2. The petitioners are the defendants in the suit for possession, permanent and mandatory injunction, recovery of arrears of rent and damages/mesne profits filed by the respondent.
3. Perusal of the record reveals that on 18.03.2024 upon completion of pleadings, the Trial Court directed the petitioners to appear in person for examination of parties on 01.04.2024.
4. Petitioners did not appear for examination on the date fixed i.e. 01.04.2024. The Trial Court was of the view that appearance of the



petitioners was necessary for the examination prior to the settlement of issues and therefore, granted one more opportunity for the said purpose, subject to cost of Rs 5,000/- upon each of the petitioners

5. On the next date i.e. 03.06.2024, petitioner No.1 appeared through VC and on being examined by the Court, she feigned ignorance stating that she is illiterate. Petitioner No.2 did not appear as his counsel informed the Trial Court that he has gone to Doctor as he was suffering from diarrhoea.

6. Since petitioner No.2 was not present for the examination and cost was not paid, the Trial Court vide impugned order dated 03.06.2024 struck off the defence of the petitioners herein and, listed the matter for plaintiff's evidence.

7. Learned counsel for the petitioners submits that petitioner No.2 could not appear as he was unwell on the date fixed i.e. 03.06.2024. In support of said submission, learned counsel relies upon the prescription of the Doctor dated 01.04.2024 and 06.06.2024. However, no prescription of 03.06.2024 has been placed on record to show that petitioner No.2 infact visited the Doctor on that day.

8. Nevertheless the prescriptions dated 01.04.2024 and 06.06.2024 does show that during the said period, petitioner No.2 was suffering from fever, abdominal pain, nausea and vomiting.

9. Even assuming that petitioner No.2 was unwell, he could have appeared through VC as was done by petitioner No.1 and could have sent the cost to his counsel for being paid to the petitioner, but it was done.

10. Learned counsel for the petitioner submits that petitioners are ready and willing to pay the cost as imposed by the learned Trial Court.



11. After part submissions, learned counsel for the respondent submits that respondent has no objection in case the defence of the petitioners be restored subject to payment of heavy cost.

12. Since the petitioners are ready to make the payment of the previous cost and in view of the concession granted by the respondent, the impugned order dated 03.06.2024 is set aside and the defence of the petitioners is restored, subject to the condition that they would pay the cost imposed vide order dated 01.04.2024 and shall also pay the additional cost of Rs 10,000/- to the respondent with further condition that petitioners shall appear in person before the Trial Court for their examination in terms of order dated 18.03.2024.

13. The petition is disposed of in terms of this order.

RAVINDER DUDEJA, J

FEBRUARY 19, 2025

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