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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 6/2025, CM APPL. 4144/2025-Exp, CM APPL. 4145/2025-Delay 159 days, CM APPL. 4146/2025-Exp from filing complete Trial Court Record.**

ASHOK KUMAR AGGARWAL AND ORS.Appellants

Through: Mr. Rohit Gupta, Advocate

versus

SURESH KUMAR & ORS.Respondents

Through: Mr. Yugansh Mittal, Advocate

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

22.01.2025

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1. The present appeal under Section 10 of the Delhi High Court Act seeks to assail the orders dated 09.07.2024 and 20.12.2024 passed by the learned Single Judge in CS(OS) 264/2023. We may note that the appeal is accompanied by an application seeking condonation of 159 days delay in filing the present appeal.

2. Vide the impugned order dated 09.07.2024, the learned Single Judge after framing issues in the suit had appointed a Local Commissioner for recording of evidence. Vide the second impugned order dated 20.12.2024, the learned Single Judge directed that the appellants having already cross-examined the respondents' witness for five days, his further cross-



examination would be confined to two days.

3. Learned counsel for the appellants submits that the appellants had never consented to the appointment of a Local Commissioner for recording of evidence, which fact is evident from perusal of para 15 of the said order. Further, since the cross-examination being conducted by the counsel for the appellants was not being permitted to proceed on account of repeated interruptions by the learned counsel for the respondents. He submits that when the matter was next taken up before the learned Single Judge on 20.12.2024, the counsel for the appellants could not appear before the Court on account of having noted a wrong date, the learned Single Judge by accepting the respondents' false plea that the cross-examination had already been conducted for five days, confined the right of the appellants to further cross-examine the respondents' witness to two days. He submits that this assertion of the respondents that the witness had already been cross-examined for five days, on which plea, the order dated 20.12.2024 is factually incorrect. He, therefore, contends that both the impugned orders are based on an incorrect factual position, are liable to be set aside.

4. After some arguments, he submits that in view of the factually incorrect averments recorded in the order dated 20.12.2024 as also in the order dated 09.07.2024 which proceeds on the basis that the parties had consented for appointment of Local Commissioner for recording of evidence, he will instead of pressing the present appeal, approach the learned Single Judge by way of a review/ recall application. He, therefore, prays that the appellant may be granted liberty to approach the learned Single Judge by way of a review/ recall application.

5. Learned counsel for the respondent, while controverting the aforesaid



submissions of the appellant has no objection to this limited prayer. In the light of the aforesaid, the appeal alongwith the pending applications is dismissed as not pressed with the liberty to the appellant to move a review petition/ recall application before the learned Single Judge. We, however, make it clear that in case such a petition/ an application is moved within one week from today, the same will be considered on merits and will not be rejected on the ground of delay.

6. We, however, make it clear that we have not expressed any opinion either on merits of the grounds raised in the present appeal or regarding the appellants' claims that the factual position has been incorrectly recorded in the orders dated 09.07.2024 and 20.12.2024.

7. Further, in these peculiar circumstances, we request the learned Local Commissioner to defer the cross-examination, till the appellants' application for recall/ review, to be filed by the appellants, is listed before the learned Single Judge, whereafter the parties will be governed by the order as may be passed by the learned Single Judge.

REKHA PALLI, J

SAURABH BANERJEE, J

JANUARY 22, 2025/So