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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 30/2025 & CM APPL. 5937/2025**

KRISHNA JAIN

.....Petitioner

Through: Mr. Anuj Jain, Mr. Jai
Gaba & Mr. Jatin Verma,
Advts.

versus

BALRAM GUPTA & ORS.

.....Respondents

Through: Mr. N.K. Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

12.02.2025

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CM APPL. 5938/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed challenging the order dated 17.05.2024 (hereafter '**impugned order**') passed by the learned District Judge, Dwarka Courts, Delhi, pursuant to which the petitioner's evidence was closed.

4. The petitioner had filed a suit for declaration, possession and mandatory injunction against the respondents thereby seeking a decree that certain documents which were allegedly executed by the petitioner in favour of Respondent No. 1, be declared as null and void.

5. On 17.05.2024, the petitioner had summoned Mr. S.K. Khanna as a witness. The Court noted that the summoned witness had expired and noting that the matter had been pending from last more than seven years, closed the petitioner's evidence.

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6. The petitioner thereafter moved an application on 31.05.2024 seeking recall of the order dated 17.05.2024 and prayed for another opportunity to lead evidence.

7. The order sheets indicate that one witness Mr. Devak Ram Sharma was sought to be examined by the petitioner. It appears that matter proceeded for number of years and the witness Devak Ram Sharma, who is stated to be a Handwriting Expert, though was brought for examination way back on 25.01.2019, was never summoned again.

8. In the opinion of this Court, before closing the plaintiff evidence, the plaintiff should have been given one last opportunity to seek summoning of the witness, who was already mentioned in the list of witnesses.

9. In regard to the application of the petitioner to lead further evidence, the learned Trial Court rightly noted that any or more witnesses that the petitioner seeks to summon pursuant to the investigation being carried out by the police in a criminal case, is not relevant.

10. The petitioner was aware of his case and was at liberty to summon witnesses. The application seeking summoning of the witnesses is not dependent on the criminal investigation being carried out on the same set of facts.

11. In the opinion of this Court, the petitioner should have been given an opportunity to summon Mr. Devak Ram Sharma who was originally mentioned as a witness in the list of witnesses filed by the petitioner.

12. The impugned order is set aside to the aforesaid extent.

13. Considering the delay which has been occasioned due to the laxity on the part of the petitioner, the petitioner is directed to pay a cost of ₹10,000/- to the respondents.

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14. The learned Trial Court is directed to permit the petitioner to lead evidence of Mr. Devak Ram Sharma.
15. The learned Trial Court is directed to expedite the recording of the evidence and not grant unwarranted adjournments to any of the parties.
16. The petition is allowed in the aforesaid terms.
17. Pending application also stands disposed of.

AMIT MAHAJAN, J

FEBRUARY 12, 2025

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