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

+ CM(M) 342/2025

M/S EXCEL ENGINEERING COMPANYPetitioner

Through: Mr. Vikas Sethi, Adv

versus

M/S CAPARO ENGINEERING INDIA LTD
& ANR.

.....Respondents

Through: Mr. Amit Kumar & Mr. Goorang
Gupta, Advs

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **19.02.2025**

CM APPL. 10068/2025 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 342/2025 & CM APPL. 10067/2025 (Stay of Order)

1. This is a petition under Article 227 of the Constitution of India impugning the order dated 26.10.2024 whereby the Trial Court closed the right of the petitioner to lead his evidence.
2. Petitioner is the plaintiff in the suit for recovery and damages.
3. The Trial Court's order reveals that affidavit of the witnesses was not filed before the Trial Court and the advance copy of affidavit was also not supplied to the opposite counsel.
4. Learned counsel for the petitioner submits that advance copy of the affidavit was sent to the counsel for the respondents way back on



30.07.2022 via email, copy of the said email is placed on record.

5. However, inadvertently, the affidavit was not filed in Court and that petitioner was ready to file the same before the Trial Court on the same day, but the learned Trial Court refused to entertain the same and closed the evidence. He submits that petitioner needs only one opportunity to examine his only witness.

6. Learned counsel for the respondents appearing on advance notice submits that advance copy of the affidavit was not provided and there is no justification to the challenge raised to the impugned order of closure of the plaintiff's right to lead evidence.

7. Right to lead evidence is a valuable right. If such right is denied, the petitioner may suffer irreparable loss. For the delay caused by not filing the affidavit of evidence or providing the advance copy of affidavit of evidence, respondent can certainly be compensated by cost.

8. Keeping in view of the entire facts and circumstances, I deem it opposite to grant one more opportunity to petitioner to lead its evidence.

9. The impugned order dated 26.10.2024 is set aside, subject to cost of Rs 15,000/- with direction to the petitioner to provide advance copy of affidavit of evidence of PW1 within a period of next 15 days. This order is also subject to further condition that the petitioner shall not seek any adjournment for leading plaintiff's evidence on the date fixed by the trial Court for the said purpose.

10. Petition stands disposed off accordingly.

RAVINDER DUDEJA, J

FEBRUARY 19, 2025/sk/ia