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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 3rd April, 2025***+ **CM(M) 615/2025 & CM APPL. 19521/2025****SUNIL KUMAR PAUL**

.....Petitioner

Through: Mr. Naveen Chauhan, Advocate.

versus

CHANDERBHAN KALRA

.....Respondent

Through: Mr. Mukesh Birla, Advocates.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner is defending a suit for possession and recovery of rent, mesne profits and injunction.
2. When the case was at the stage of defendant's evidence, the defendant wanted to examine himself and his wife, in their defense.
3. The learned Trial Court had directed both of them to be present for the purposes of their cross examination. However, when the case was taken up by the learned Trial Court on 28.01.2025, DW-2 Mrs. Sarita Paul (wife of defendant) did not appear and her counsel apprised that she was, somehow, under the impression that her examination would be recorded only after the cross examination of DW-1 was complete. Keeping in mind the fact that the plaintiff is an octogenarian, and the specific directions which had earlier been given by the learned Trial Court, the opportunity for the defendant to examine DW-2 was closed.



4. An application was moved seeking recall of the abovesaid order and even such application has been dismissed by the learned Trial Court on 25.02.2025 and such orders are under challenge.
5. Learned counsel for plaintiff appears on advance notice.
6. Mr. Mukesh Birla, learned counsel for the plaintiff, submits that though the present petition lacks any merit and substance and does not disclose any compelling reason, in order to avoid any unnecessary delay in his suit, he would have no objection if the petition is allowed, subject to stringent conditions. He also submits that his such concession is without prejudice to his rights and contentions.
7. The next date before the learned Trial Court is stated to be 19.04.2025 and the matter is fixed for final arguments.
8. Learned counsel for the petitioner submits that there is no intent to delay the matter and DW-2 did not appear under some *bona fide* assumption. He, however, undertakes that on the next fixed date before the learned Trial Court, she would make herself present before the learned Trial Court so that she can be examined and cross examined. He also leaves it to discretion of this Court to impose any cost, though it is reiterated that there was never any intention or objective to delay the trial.
9. Keeping in mind the overall facts and the concession given by learned counsel for the plaintiff, the present petition is disposed of with the direction to learned Trial Court to permit examination of DW-2 Mrs. Sarita Paul.
10. It will be for the learned Trial Court to consider whether such examination can be conducted on 19.04.2025 itself or on any other date, subject to convenience and availability of all concerned.
11. All in all, DW-2 Ms. Sarita Paul is granted only one effective



opportunity in this regard. Simultaneously, for causing delay in the matter the defendant is burdened with a cost of Rs. 15,000/-. Let such cost be also cleared on the said date before the learned Trial Court.

12. Petition, along with all pending application, stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 3, 2025 /sw/pb