



\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 16th April, 2025**

+ **CM(M) 684/2025 & CM APPL. 21908-21909/2025**

RAKESH KUMAR SOIN

.....Petitioner

Through: **Mr. Raghav Sethi, Advocate**

versus

SH. NITIN SOIN & ORS.

.....Respondent

Through: **Mr. Indu Shekhar, Advocate for R-1 to R-3**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 21908/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 684/2025 & CM APPL. 21909/2025

1. Petitioner has filed a suit seeking declaration, partition, dissolution of partnership business and injunction.
2. He is aggrieved by order whereby his right to lead further evidence was closed and also by the order whereby his right to cross-examine witnesses of defendant has also been closed.
3. When the suit in question was taken up by learned Trial Court on 31.07.2024, noticing that nobody had appeared on behalf of the plaintiff and that no steps had been taken to lead further evidence, plaintiff's evidence was closed. Thereafter, when the matter was taken up by the learned Trial Court on 24.12.2024, opportunity to cross-examine the defendant's witnesses was closed, noticing non-appearance from the side of plaintiff.



4. Learned counsel for petitioner submits that there was communication gap between the plaintiff and his counsel which has resulted in the unwarranted situation and consequent delay in the matter.
5. It is asserted that petitioner/plaintiff is having serious heart ailment and has been visiting the hospital, time and again. It is though admitted that there was no hospitalization after 26.10.2023 but fact remains that counsel for the plaintiff stopped appearing before the learned Trial Court and such fact was never in the knowledge of plaintiff and, therefore, aforesaid adverse orders have been passed.
6. Learned counsel for respondent appears on advance notice and submits that there is no merit and substance in the present petition.
7. This Court has seen various orders which have been passed by the learned Trial Court, from time to time.
8. Admittedly, on several dates, there was no appearance from the side of plaintiff and his counsel.
9. Though the learned Trial Court is fully justified in observing that in the present era of digitization, when the status of the case is uploaded on the website without any delay and when such status is readily available to any such litigant, the plaintiff should have accessed the website and should have seen the progress in the suit filed by him, at the same time, endeavour of the Court should be to decide the suit on merits, instead of on technicalities.
10. Learned counsel for the petitioner undertakes that if opportunity is given, there would not be any further instance of non-appearance from the side of plaintiff and every effort would be made to ensure the presence of concerned remaining witnesses before the Court as well. He also submits that after examination of his witnesses, if the defendant also wants to examine



any additional witness, he would have no objection to such request also.

11. According to learned counsel for petitioner, though it was only on account of the medical exigency and the manner in which the matter was followed up by his counsel, adverse orders have come his way, he is ready to adhere to any terms & conditions to be imposed by this Court.

12. Keeping in mind the overall facts and circumstances of the case and also in the interest of justice, present petition is disposed with the following directions: -

- (i) Plaintiff would be permitted to examine his remaining witnesses. Steps for summoning the official witnesses would be taken by him in terms of the directions to be passed in this regard by the learned Trial Court and plaintiff would ensure that such steps are taken without any delay.
- (ii) Plaintiff would be at liberty to examine his sister Ms. Neelam and mother Mrs. Anjana whose names already figure in the list of witnesses. However, he would submit their affidavits without any further delay before the learned Trial Court, as per the directions to be passed by the learned Trial Court.
- (iii) Plaintiff would also be given one effective opportunity to cross-examine those witnesses of the defendant who have already been examined.
- (iv) Defendant would also be permitted to examine any additional witness. However, in this regard appropriate request would be made by him before the learned Trial Court, once the evidence of plaintiff is over.
- (v) For causing delay in the matter, plaintiff is burdened with cost of



Rs. 25,000/-. Such cost shall be paid to the defendant/ learned counsel for defendant tomorrow as the case is now scheduled for hearing before the learned Trial Court tomorrow i.e. 17.04.2025.

(vi) After ascertaining the convenience of learned counsel for the parties and its own board position, learned Trial Court shall give dates for the purpose of examination of remaining witnesses of plaintiff and thereafter for cross-examination of witnesses of the defendant and it is expected that the plaintiff shall, scrupulously, adhere to all such dates and would make himself available before the learned Trial Court for the requisite purpose.

13. Petition, along with pending applications, stands disposed of in the aforesaid terms.

14. A copy of this order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

APRIL 16, 2025/dr/pb