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

+ **CM(M) 3927/2024 & CM APPL. 69300/2024 STAY**

ARCHANA MIRGAN & ANR.Petitioners

Through: **Mr. Vimram Saini, Advocate.**

versus

BIMLA DEVI (SINCE DECEASED) THROUGH LRS. AND ANR.

.....Respondents

Through: **Ms. Beenashaw N. Soni, Standing
Counsel MCD with Ms. Mansi Jain,
Advocate for R-4**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

27.01.2025

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1. This is a petition under Article 227 of the Constitution of India seeking to set aside the impugned order dated 09.10.2024 passed by the learned District Judge-04, Saket, Delhi in Civil Suit being DJ No. 7227/2016 whereby the application under Order 47 Rule 1 CPC for review of the order dated 23.08.2022 along with the condonation of delay, has been dismissed.
2. Petitioner is the plaintiff before the trial court. He filed a suit for partition and injunction.
3. The learned Trial Court taking note of the fact that case was pending for the evidence of the plaintiff since 2018, and previous cost was not paid, proceeded under Order 17 CPC and closed the right of the plaintiff to lead plaintiff evidence.
4. Petitioner thereafter filed an application for review of the order along



with an application for condonation of delay, but the same was also dismissed by order dated 09.10.2024.

5. After part submissions, learned counsel for the petitioners submits that he needs only one opportunity to lead the entire evidence of the plaintiff.

6. Learned counsel for respondent submits that he has no objection, in case the petitioner is granted liberty to lead the plaintiff's evidence subject to heavy cost, as also upon payment of the previous cost.

7. Even though, there is no merit to the challenge to the impugned order, it would be appropriate if the lis between the parties is decided on merits and therefore, for the said purpose, petitioner is granted one more opportunity to lead the plaintiff's evidence.

8. Petition is disposed of with the direction that petitioner be granted one opportunity to lead plaintiff's evidence subject to payment of previous cost, if any, and additional cost of Rs.10,000/-. The learned counsel for petitioner undertakes to make payment of cost to the respondent on date fixed before the trial court

9. The petitioner is at liberty to summon official witness for the date fixed before the trial court. It is made clear that petitioner shall not get any further opportunity to lead plaintiff's evidence, and therefore, must ensure that both the witnesses are present in court on the next date fixed before the trial court.

RAVINDER DUDEJA, J

JANUARY 27, 2025/ib/r