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

+ **CM(M) 4100/2024**

SANJEEV KUMAR WADHWA & ANR.Petitioners

Through: Mr. Rishi Manchanda, Mr. Arun
Kumar, Mr. Siddharth Mullick and
Mr. Lakhan Gupta Advocates.

versus

M/S COSMOS DEVELOPERS PVT LTDRespondent

Through: Mr. Sanjeev Saraswat, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **16.01.2025**

CM APPL. 73815/2024 EXEMPTION

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 4100/2024, CM APPL. 73814/2024 INTERIM RELIEF

1. This is a petition under Article 227 of the Constitution of India read with Section 151 CPC praying for setting aside the order dated 21.08.2024 and 28.10.2024 passed by the learned District Judge, Commercial Court-04, West District, Tis Hazari Courts in CS(COMM) No. 970/2022 titled as M/s. COSMOS Developers Pvt. Ltd. vs. Sanjeev Kumar Wadhwa.
2. The perusal of the order dated 21.08.2024 reveals that PW-1 was present for cross-examination but adjournment was sought on behalf of the petitioner on the ground that the counsel was not in a position to appear as



his mother was hospitalized. Taking note of the conduct of the petitioner that ample opportunities had already been granted, the trial court closed the right of the petitioner to further cross-examine PW-1.

3. The review application filed by the petitioner for recall of the order dated 21.08.2024 was also dismissed.

4. While passing this order, the trial court took note that the mother of the counsel for the petitioner was not hospitalized on 21.08.2024 and that submissions made on his behalf for seeking adjournment were factually incorrect.

5. Learned counsel for the petitioner submits that mother of the petitioner was hospitalized at BLK MAX Hospital, and was discharged on 20.08.2024 but the discharge and billing formalities were completed as late as by 9:00 PM and ultimately discharge took place early hours of 21.08.2024. It is further submitted that the counsel had given the necessary instructions to the proxy counsel about his mother being hospitalized much before the discharge, and accordingly he made such statement before the trial court. The record of BLK MAX is not part of the digital record, however, copy of the same has been produced today, and which shows that the discharge summary prepared on 20.08.2024 was last signed at around 9:08 pm. It is thus probable that actual discharge may have taken some more time.

6. The petition has been opposed by learned counsel for the respondent submitting that petitioner had taken several adjournments for cross-examination of PW-1, and a wrong statement was made before the court for the purpose of seeking adjournment on 21.08.2024, and therefore, there is no justification for grant of further opportunity to the petitioner for cross-



examination of PW-1. In order to buttress his submission, he has also drawn the attention of the court to a courts order dated 20.08.2024 passed in W.P.(C) 11479/2024 which marks the attendance of the counsel Mr. Rishi Manchanda.

7. With regard to the presence of counsel being there in the court order dated 20.08.2024 in W.P.(C) 11479/2024, the contention of the learned counsel for the petitioner is that he appeared in Court through video conferencing, but inadvertently this fact is not recorded in attendance. Rather he places on record a copy of the order of the same date i.e 20.08.2024 passed in Company Petition No. 265/1998 which records the request made on his behalf on the ground of personal difficulty. It is thus submitted that on 20.08.2024 and 21.08.2024, the counsel was not appearing physically in any of the courts because of medical exigency of his mother.

8. The submissions made have been taken into consideration. The Court is of the view that the list between the parties should be decided on merits. No serious prejudice should be caused to the respondent in case the petitioner is granted one more opportunity to cross-examine PW-1.

9. Hence keeping in view the entire facts and circumstances, the petition is allowed and the impugned order dated 21.08.2024 and 28.10.2024 are set aside with direction to the trial court to grant only one opportunity to the petitioner to complete the cross-examination of PW-1, subject to cost of Rs.10,000/-. It is made clear that petitioner shall not seek adjournment on any ground whatsoever and shall complete the cross-examination on the next date already fixed before the trial court.

RAVINDER DUDEJA, J

JANUARY 16, 2025/ib