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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 4218/2024 & CM APPL. 76337/2024 (stay)**
KUMUD SETHI & ANR.Petitioners

Through: Mr. Varun Mehlawat and Mr. Neeraj
Yadav, Adv.

versus

RAJ KUMARI BABBAR & ORS.Respondents
Through: Mr. Vibhor Garg and Ms. Diksha
Kakkar, Advs. for R-1 and R-3.
Mr. Rajesh Baweja, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
10.03.2025

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1. This is a petition under Article 227 of the Constitution of India impugns the order dated 29.04.2023 passed by the learned trial court in ARC No. 153/2017 titled as “Kumud Sethi & Ors. Vs. Raj Kumar Babbar & Ors.”
2. Learned counsel for the petitioners submits that he has already examined two witnesses on affidavit and they have been cross examined by the learned counsel for respondents. It is further submitted that the learned trial court closed the right of the petitioners to file the affidavits of the remaining witnesses by the impugned order dated 29.04.2023.
3. It is further submitted that the trial court ought not have closed the right of the petitioner to file affidavits of other witnesses merely on the ground that the same were not filed initially. He strongly places reliance on the judgment of the Bombay High Court in the case of *Kwadu vs. Suresh & Ors. W.P.(C)*



5203/2008 decided on 21.04.2009, wherein the Bombay High Court pertinently held that no party can be directed to file the affidavits of witnesses at one and the same time because the party has the choice to decide as to number of witnesses to be examined in the court, and therefore, the trial court ought not to have directed the defendants to file the affidavits of all the witnesses which they want to examine.

4. Per contra, the learned counsel for the respondents submits that the judgment of the Bombay High Court would not apply inasmuch as the evidence in that case had yet not started, but in the present case two witnesses of the petitioners have already been examined and the entire defence of the respondents stands disclosed. However, in order to prevent any further delay, the learned counsel has no objection in case the petitioners be granted an opportunity to file the affidavits of other witnesses subject to cost and condition that the affidavits of such witnesses shall not travel beyond the pleadings.

5. Right to lead evidence is a valuable right of parties. The court should not shut its doors to the evidence if the same is relevant for the proper adjudication of the matter in issue.

6. Keeping in view the aforesaid, and the concession granted by the learned counsel for the respondents, the petition is allowed and the impugned order dated 29.04.2023 is set aside with cost of Rs.10,000/- with further condition that the affidavits be filed within a period of two weeks with advance copy to the respondents. It is made clear that no adjournment shall be sought on account of any reason whatsoever by the petitioner.

7. Needless to mention that the evidence has to be confined to the pleadings and cannot travel beyond the same.



8. The petition is disposed of accordingly.

RAVINDER DUDEJA, J

MARCH 10, 2025/ib/ia