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

\# **CNR No. DLHC010495992026**

\+ CM(M) 2272/2026, CM APPL. 71452/2026 & CM APPL. 71453/2026

M/S PRIMUS AGRO FOOD EXPORTS PVT LTD .....Petitioner

Through: Mr. Sumit Sinha, Adv. (through VC)

versus

M/S MODSAL FROZEN FOODS PVT LTD .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

O R D E R

% 13.10.2026

1. Through the present petition, the petitioner/defendant no. 1 is assailing the orders dated 18.08.2026 and 14.09.2026, passed by the learned District Judge (Commercial Court)-06, (Central District), Tis Hazari Courts, Delhi, in CS (COMM) 661/25, titled *"M/S Modsal Frozen Foods (P) Ltd. v. M/S Primus Agro Food Exports Pvt. Ltd. and Ors."*.

2. Briefly stated, the respondent/plaintiff instituted the underlying suit seeking *inter alia* recovery of Rs. 41,50,000/- along with future and *pendente lite* interest. Consequently, issues were framed on 09.09.2025.

3. While the matter was listed for plaintiff's evidence, it was taken up on 19.03.2026, whereupon PW-1 was partly cross-examined but his further cross-examination was deferred at the behest of the learned counsel for the petitioner. At the next date of hearing i.e., 11.05.2026, an adjournment was

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sought by and granted to the learned counsel for the petitioner, and the matter was adjourned to 13.07.2026. On 13.07.2026, yet another accommodation was prayed for by the learned counsel for the petitioner, mentioning the engagement of the main counsel in another matter before the Hon'ble Punjab and Haryana High Court, Chandigarh. The learned Trial Court indulged the petitioner subject to a cost of Rs. 5,000/- and adjourned the matter.

4. At the next date of hearing being 18.08.2026, PW-1 was present for his further cross-examination but the learned counsel for the petitioner sought an adjournment, stating that he was newly engaged. The learned Trial Court *vide* the impugned order dated 18.08.2026 declined this request, discharged PW-1, closed plaintiff's evidence and put up the matter for defendant's evidence. The relevant portion of the impugned order reads thus:

> "No reason is explained to the Court for change of the counsel for the defendant and even otherwise, if due to some exigency the counsel already engaged was not available to represent the defendant then more than a month time was available to defendant to engage new counsel to represent it.
>
> Finding no compelling reason with the defendant, the plea of the counsel appearing for the defendant to adjourn the matter is rejected.
>
> **Ld. counsel is granted an opportunity to cross-examine the PW1 further. The counsel for the defendant has not put any question to the PW1, as such, the PW1 is discharged.**
>
> **No other witness is present nor summoned nor affidavit of any other witness has been filed for any further evidence of the plaintiff. The evidence of the plaintiff is closed.**
>
> **Now, put up for Defendant Evidence on 14.09.2026**."

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5. Subsequent thereto, the petitioner moved an application under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking to recall PW-1. The learned Trial Court *vide* the impugned order dated 14.09.2026 dismissed this application. The relevant portion of the aforesaid impugned order is extracted hereinbelow:

> "The submissions / contentions made in the application qua the engagement of new counsel were considered on the last date of hearing itself. One other submission made in the application is that the main counsel namely, Shri Sumit Singhal was also appearing in a matter before the Hon'ble High Court of Delhi, is also not sufficient to recall the order dated 18.08.2026 as the non-availability of the counsel as busy in other matter is not recognized as a ground to adjourn the matter. **The defendant has availed three opportunities to complete the cross-examination of the plaintiff witness and the in the absence of any cogent reason, the power of the court to recall the witness under Section 151 CPC cannot be exercised in favour of the defendant. The application is dismissed accordingly**.
>
> One more opportunity is granted to defendant to lead DE, if any, with advance copy of the affidavit of the witness to the plaintiff.
>
> Put up on 15.10.2026 for DE."

6. Mr. Sumit Sinha, the learned counsel for the petitioner submits that PW-1 has already been partly cross-examined and the closure of the petitioner's right to conclude his cross-examination is unwarranted as the petitioner never deliberately or wilfully delayed the proceedings. It is also submitted that the learned Trial Court failed to consider imposition of costs as an alternative to the complete closure of the petitioner's right to complete further cross-examination of PW-1.

7. After hearing the learned counsel for the petitioner at length and perusing the record, this Court is of the considered view that the petitioner has considerably delayed the underlying proceedings by seeking repeated

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adjournments. However, since the matter is still at the stage of defendant's evidence, this Court believes that the right of the petitioner to further cross-examine PW-1 can be revived if the respondent is suitably compensated for the delay.

8. In view thereof, Mr. Sinha, on instructions, submits that the petitioner is ready and willing to pay costs of Rs. 1,00,000/- to the respondent, together with clearing outstanding costs imposed on it by the learned Trial Court. The above statement, coming on instructions, is hereby taken as an undertaking.

9. Therefore, the present petition is allowed, subject to the petitioner paying costs of Rs. 1,00,000/- to the respondent, in addition to clearing the outstanding costs imposed on it by the learned Trial Court. The entire amount mentioned herein shall be paid on or before the next date of hearing before the learned Trial Court i.e., 15.10.2026. Subject to such compliance, the petitioner is granted one last and final opportunity to conclude further cross-examination of PW-1 on 15.10.2026, or on such subsequent date as may be convenient to the learned Trial Court.

10. In the event that the petitioner fails to pay the aforementioned costs, the indulgence granted herein shall stand vacated without further reference to this Court and the learned Trial Court shall be at liberty to proceed further with the matter in accordance with law.

11. As nothing survives for further adjudication, the present petition, along with pending applications, stands disposed of.

AJAY DIGPAUL, J

OCTOBER 13, 2026/*AS/as*

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