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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
Date of decision: 07.08.2023

+ **CM(M) 714/2023**

PITAM GOEL

..... Petitioner

Through: Mr. Sanjeev Sagar and Mr. Garav Manuja, Advocates

versus

RADHEY SHYAM

..... Respondent

Through: Mr. Mukesh Kumar Sharma, Advocate

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

**CM APPL. 39971/2023 (for exemption)**

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application stand disposed of.

**CM APPL. 39969/2023 (for modification) & CM APPL. 39970/2023 (for stay)**

1. This is an application filed by the Petitioner seeking modification of the judgment dated 02.05.2023 passed by this Court in the present matter, wherein the Petitioner was allowed to examine Sh. A.A. Vetal (the tenant) and Sh. Chajjuram (the contractor), as per the undertaking given by the Petitioner herein to the Court. The operative portions of the judgment read as under:

*"16. In view of the aforesaid statement of the learned counsel, it is directed that, apart from Sh. A.A. Vetal (the tenant) and Sh. Chajjuram (the contractor) no other witness will be permitted to be examined by the petitioner/ defendant No.1.*

*17. Petitioner/ Defendant No.1 is directed to place on record the affidavit of evidence of both the witnesses within one week from today and the first witness*



*will be examined by the learned Trial Court on 10.05.2023, subject to its convenience.”*

(Emphasis supplied)

2. The Petitioner has moved this application to state that neither of the witness referred to in paragraph 16 of the judgment dated 02.05.2023 are now available for their cross-examination.

2.1 He has filed this application seeking leave to instead examine Shri Jai Bhagwan Aggarwal as the last witness. He states that the name of Shri Jai Bhagwan Aggarwal appears at serial no.2 in the list of evidence filed on 26.08.2013.

2.2 He states that the affidavit by way of evidence of Shri Jai Bhagwan Aggarwal is annexed with this application at Annexure-3. He states that the matter is next listed before the Trial Court on 09.08.2023 and he undertakes to this Court that the witness shall remain present on the said date for tendering of evidence and his cross-examination; and he will continue to remain present on each successive date until the cross-examination is over.

3. In reply learned counsel for the Respondent opposes this application. He states that similar assurances were held out by the Petitioner when the order dated 02.05.2023 was passed.

3.1 He states that the Respondent herein has instituted a suit for recovery of possession against the Petitioner herein and the Petitioner by using these directory tactics has perpetuated his possession.

3.2 He states that the matter has remained pending before the Trial Court since February, 2016 for recording of defendant's evidence; however, the Petitioner has not closed his evidence till date to the prejudice of the Respondent herein.

3.3 He further expresses an apprehension that after permission is sought from this Court, the Petitioner witness will be unavailable for conclusion of



evidence on the pretext of illness or old age.

4. In response, learned counsel for the Petitioner states that the witness is in good health and undertakes that no adjournment will be sought on any plea whatsoever. He states that the said witness will remain present before the Trial Court.

5. This Court has considered the submissions of the parties.

6. The undertaking of the Petitioner that his witness shall remain present on 09.08.2023 and not seek any adjournment on any ground until his cross-examination is over, is taken on record, and he is bound down to the same.

7. This Court finds merit in the submissions of the counsel for the Respondent that the Petitioner has unreasonably delayed the recording of the evidence. However, keeping in view, the conduct of the Petitioner and the submissions of the Respondent, last opportunity is granted to the Petitioner to substitute his witnesses and lead evidence of Shri Jai Bhagwan Aggarwal on 09.08.2023, subject to his making payment of costs of Rs. 25,000/- to the Respondents on or before 09.08.2023.

8. Further, in view of the conduct of the Petitioner, it is directed that if Shri Jai Bhagwan Prakash remains unavailable for recording the cross-examination on any single date, the evidence of the said witness shall stand closed and be struck off from the record.

9. It is also made clear that no application will be entertained for substitution of Shri Jai Bhagwan Aggarwal.

10. With the aforesaid directions, the present application is disposed of.

**MANMEET PRITAM SINGH ARORA  
(JUDGE)**

**AUGUST 7, 2023/rk/sk**