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

+ **CM(M) 158/2023**

POONAM MALHOTRA Petitioner

Through: **Mr. B. Mahapatra, Advocate**

versus

VISHAL GOEL & ANR. Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **01.02.2023**

[The proceeding has been conducted through Hybrid mode]

CM APPL. 4732/2023 (Exemption)

1. This is an application seeking exemption from filing certified copy of the documents.
2. Exemption is allowed, subject to all just exceptions.
3. However, the petitioner is directed to obtain and file the certified copy of the exempted documents within four weeks from today.

CM(M) 158/2023 & CM APPL No.4731/2023 (Stay)

4. The petitioner challenges the order dated 16.12.2022 in CS DJ 10133/2016 titled '*Vishal Goel vs. Poonam Malhotra & Anr.*' whereby the learned Trial Court has restricted the examination of the defendant's witnesses (petitioner's witnesses) to the extent that if the witnesses are not available on two dates, the right to examine such witnesses would automatically be treated as closed.
5. Mr. B. Mahapatra, learned counsel appearing for the petitioner



submits that the impugned order as passed cannot curtail the rights of the parties to examine the witnesses as and when they are available.

6. Learned counsel submits that the summoning of the official witnesses and their appearance before the Court would not be in the control of the petitioner-defendant and as such the default of the summoned witnesses appearing on two consecutive dates cannot entail in the automatic closure of the right of the petitioner-defendant to examine the witnesses. This would be against the principles of natural justice as well as fair play and requires interference by this Court.

7. Issue notice. Upon the petitioner taking steps within one week, let notice be issued to the respondents through all permissible modes. Additionally, through learned counsel appearing for the respondents before the learned Trial Court.

8. Reply, if any, be filed within four weeks. Rejoinder thereof, if any, be filed within four weeks thereafter.

9. In the meanwhile, it is directed that the Local Commissioner may continue with the examination of the witnesses of the petitioner without being curtailed in any manner by the restriction placed vide the impugned order.

10. At this stage, learned counsel draws attention of this Court to prayer (b) of the petitioner which reads as under:-

*“b. Pass an order setting aside order dated 04.11.2022 and its subsequent order dated 16.12.2022 in CS DJ 10133/16 and allow the petitioner to bring on record the documents i.e. 1.) Copy of Will dt. 25.09.2018 and Codicil dt. 22.11.2018;
2.) Copy of death certificate dated 23.01.2019;
3.) Copy of order dated 06.01.2022 in Comp*



*No.41128/2019; and,
4.) the copy of FIR No. 0102/2022 registered by the
Police Station, New Friends Colony, New Delhi.”*

Learned counsel submits that suitable orders in respect of the aforesaid prayer (b) may also be passed.

11. This Court is of the considered opinion that the order dated 04.11.2022 which is also impugned in the present petition is a misconceived prayer so far as the present petition is concerned and ought to have been challenged by way of independent proceedings.

12. In that view of the matter, learned counsel seeks leave to withdraw prayer (b) to redress the grievances raised therein in appropriate proceedings.

13. Liberty as sought is granted. The prayer (b) from the present petition be considered as destitute from the records.

14. List on 04.05.2023.

15. A copy of this order be given *dasti* under the signatures of Court Master.

TUSHAR RAO GEDELA, J

FEBRUARY 1, 2023

Aj