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

+ **CM(M) 1198/2022**

SHRI RAJ TOMAR

..... Petitioner

Through: Mr. Vinay Shankar Dubey, Advocate.

versus

SHRI RAJAT SUKHIJA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

13.01.2023

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[The proceeding has been conducted through Hybrid mode]

CM APPL. 1659/2023 (for early hearing)

1. This is an application seeking early hearing of the petition.
2. For the reasons stated in the application, the application is allowed.
3. The matter be listed on the date already fixed i.e., 08.05.2023.

CM APPL. 47932/2022 (for exemption)

4. Exemption is allowed, subject to all just exceptions.
5. However, the petitioner is directed to file the certified copies of the exempted documents within six weeks from today.
6. The application is disposed of.

CM(M) 1198/2022 & CM APPL. 47931/2022 (for stay)

7. Petitioner challenges the order dated 22.09.2022 of the learned Trial Court, whereby the learned Trial Court has struck off the

CM(M) 1198/2022

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defence of the petitioner and also directed that the written statement be taken on record on the ground that despite number of opportunities granted to the petitioner to be present in person for recording of statement, the petitioner failed to do so, as also for the non-deposit of cost of Rs. 5,000/-, which was imposed upon the petitioner.

8. Learned counsel submits that the non-payment of cost as well as non-appearance of the defendant for the purposes of recording of statement should not entail such a serious consequence leaving him no defence at all would be an irregularity, which would be prejudicial to the interest of the petitioner.

9. Learned counsel for the petitioner submits that the matter was listed before the learned Trial Court on 03.01.2023 and the counsel had informed the learned Trial Court about the pendency of the present petition. However, the learned Trial Court closed the right of cross-examination of the petitioner despite such information having been furnished to it.

10. *Prima facie*, this Court is of the view that such a drastic measure ought not to have been passed by the learned Trial Court in the facts and circumstances of the case.

11. Issue notice. Notice be served through all permissible modes. Additionally, through learned counsel appearing for the respondent before the learned Trial Court.

12. Reply, if any, be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

13. In the meanwhile, the learned Trial Court may proceed with the recording of the evidence of the plaintiff's witnesses, as if the written



statement of the petitioner is on record and which would be subject to the outcome of the present petition.

14. Learned Trial Court shall give an opportunity to the petitioner to conduct the cross-examination of PW-1, in view of the aforesaid observations.

15. List for consideration on the date already fixed i.e. 08.05.2023.

16. Order *Dasti* under the signatures of the Court Master.

TUSHAR RAO GEDELA, J.

JANUARY 13, 2023/nd