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

TEST.CAS. 65/2007

GURDEEP SINGH

..... Petitioner

Through: Ms. Chandrika Gutpa, Adv. with  
petitioner in person

versus

STATE

..... Respondent

Through: Mr. Saurabh Tewari, Adv. for  
R-2

Ms. Seema Singh & Mr. Rahul  
Chauhan, Adv. for LR's of Mrs.  
Joginder Kaur

**CORAM:**

**JOINT REGISTRAR (JUDICIAL) MS. PRIYA  
MAHENDRA, (DHJS)**

**ORDER**

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**30.01.2023**

**IA No.1695/2023 under Section 151 CPC moved by  
respondent no.2 seeking condonation of delay in filing  
Brief Synopsis**

Learned counsel for the petitioner is present and has  
no objection to captioned IA.

Heard. In view of reasons mentioned in the  
application, captioned IA stands allowed to the extent that  
the delay, if any, in filing Brief Synopsis by the respondent  
no.2 is condoned and the same is taken on record.  
Accordingly, captioned IA stand disposed of.

**IA No.14427/2022 u/S 151 CPC moved by respondent  
no.2 for condonation of delay in re-filing IA  
No.14426/2022**

Heard. In view of reasons mentioned in the  
application, captioned IA stands allowed as prayed for.

**IA No.14426/2022 u/S 5 of Limitation Act r/w Section  
151 CPC moved by respondent no.2 for condonation of  
delay in filing List of Witnesses**

This is an application filed by the respondent no.2  
under Section 5 of the Limitation Act r/w Section 151 CPC  
seeking condonation of delay in filing List of Witnesses.



Learned counsel for the applicant/respondent no.2 argues that at the request of the applicant, the evidence of the respondent no.2 was being recorded before learned Local Commissioner. The applicant had filed the List of Witnesses alongwith his Evidence by way of Affidavit. However, due to inadvertence, the applicant could not check whether the List of Witnesses is under objections or has been passed by the Registry of this Hon'ble Court.

The cross-examination of the applicant as RW1 got concluded before learned Local Commissioner on 14.05.2022 and then the learned Local Commissioner fixed the present matter for recording remaining evidence of the applicant for 18.07.2022. When the applicant checked from the court records, it came to the knowledge of respondent no.2 that the List of Witnesses earlier filed by the respondent no.2 is lying under objections. It is further stated that the respondent no.2/applicant only intends to summon the official witnesses with official/judicial records vide this List of Witnesses and the witnesses are only formal in nature. It is further submitted that the omission on the part of learned counsel for the respondent no.2/applicant to bring List of Witnesses on record, is neither intentional nor deliberate and it is a bonafide mistake. It is also urged that no prejudice shall be caused to the petitioner, if the said List of Witnesses is taken on record and the application is allowed to summon the said witnesses. On the other hand, the applicant will suffer irreparable loss and damage, in case the witnesses are not allowed to be summoned.

Learned counsel for the applicant also argues that



the applicant has always pursued the present matter with due diligence. The petitioner refused for recording of his evidence by the learned Local Commissioner despite the option given to him for the same. In order to expedite the matter, the applicant filed an application before the Hon'ble Court for appointment of Local Commissioner for recording of his evidence and the entire fees/charges for the same was borne by the respondent no.2/applicant as the petitioner flatly refused to pay/share the same. So, learned counsel for the applicant/respondent no.2 requests that the present application may be allowed in the interest of justice. Learned counsel for the applicant/respondent no.2 has relied upon a judgement in ***“Chuhi Ram & Ors. Vs. Ram Kumar & Anr., VIII (2000) SLT 735”*** in support of his contention.

Learned counsel for the petitioner has opposed the application. It is stated that the parties were directed to file the List of Witnesses within 15 days of framing of issues vide order 04.08.2016 in accordance with the Order XVI Rule 1(1) of CPC. However, as per own admission of the applicant, List of Witnesses was first filed by the applicant only after conclusion of evidence of the petitioner. The applicant has not furnished any reasonable explanation for not filing the List of Witnesses within 15 days of framing of issues. It is stated that oversight on the part of the counsel of the party in complying the provisions of law, is no excuse. It is further argued that the captioned IA cannot be taken on record at this belated stage in the absence of cogent and sufficient reasons. In support of his submissions, learned counsel for the petitioner has relied



upon a judgement in “*Dinesh Jain Vs. Krishan Kumar Gupta*, MANU/DE/2948/2008”.

I have carefully considered the submissions and perused the records.

The rules of procedures are hand-maids of justice and not intended to scuttle it. The rules or procedure are made to advance the cause of justice. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. Keeping in view the overall conduct of the applicant and reasons furnished in the captioned IA, I am inclined to allow the application. Accordingly, captioned IA is allowed. List of Witnesses filed by the applicant is taken on record. Accordingly, captioned IA stands disposed of.

**TEST.CAS. 65/2007**

As per office note, Brief Synopsis filed by respondent no.2, is on record. However, no Synopsis has been filed by the petitioner.

Detailed arguments heard.

At this stage, it is stated by learned counsel for the applicant that he is not pressing for the summoning of witness mentioned at Sr. No.1 of the List of Witnesses filed by him. I am satisfied about with the relevance of documents/records sought to be summoned from the witnesses mentioned at Sr.No.2 to 5 of the List of Witnesses. The relevance of the records sought to be summoned from the witnesses mentioned at Sr. No.6&7 shall be examined on the next date of hearing, at joint request.

Learned counsel for the respondent no.2 is directed



to file an appropriate application for summoning of the witnesses mentioned at Sr. No.2 to 5 within two weeks.

As per office note, Amended Memo of Parties, stated to be filed by the petitioner, is still under objections. Last and final opportunity is granted to the learned counsel for the petitioner to check up the same with the registry and get the same placed on record after removing the objections, if any.

Put up for remaining arguments on 21.03.2023.

**PRIYA MAHENDRA (DHJS)**  
**JOINT REGISTRAR (JUDICIAL)**  
**JANUARY 30, 2023/ab**  
[Click here to check corrigendum, if any](#)