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

+ **CS(COMM) 1218/2018**

RAJESH ARORA & ORS.

..... Plaintiffs

Through: Mr. Harish Malhotra, Sr Adv with Mr.
Vikas Arora & Ms. Radhika Arora, Advs

versus

KAMALJEET SINGH AHLUWALIA & ORS. Defendants

Through: Mr. Anil Sapra, Sr Adv with
Mr. Preetpal Singh & Mr. Palash
Agarwal, Advs

CORAM:

**SH. RAJ KUMAR TRIPATHI (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

% 13.09.2019

**IA No. 12690/2019 (u/O XV A Rules 6 (1) (c) and (8) of The
Commercial Courts Act, 2015 r/w Section 151 CPC filed by
plaintiffs for seeking condonation of delay in filing the affidavit of
evidence of their witness)**

Learned Senior Counsel for defendants has appeared on receipt
of advance notice of IA who vehemently opposes the application of
plaintiffs.

Learned Senior Counsel submits that plaintiffs have not filed
the medical records of treatment of Mr Rajesh Arora in a foreign
country. He further submits that the date of travel of Mr. Arora to a
foreign country, his date of examination by doctor are not disclosed in
the application and not supported with medical records. He further

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submits that the plaintiffs are delaying the matter and have failed to furnish any cogent and sufficient reason for not filing the affidavit of witness within the time as granted by Hon'ble Court. He further submits that the grounds given in the application are quite vague and therefore, plaintiffs do not deserve any sympathy and the application be dismissed. He also submitted that plaintiffs have given different versions before the Local Commissioner as well as before this Court.

Per contra, learned Senior Counsel for plaintiffs points out to para No. 3 of the IA and submits that due to illness of plaintiff No.1- Mr. Rajesh Arora, affidavit by way of evidence of the witness could not be filed. He further submits that plaintiffs have annexed the medical prescription slips of the doctor which is at Page No. 7 & 8 of the documents filed alongwith the IA. He further submits that the witness is suffering from slip disc problem for which he approached the doctor but the doctor after checking him advised for physiotherapy and he was not operated upon. He further submits that due to said reason, the medical records of the witness in a foreign country could not be furnished. He further submits that the witness is still not quite well and he will appear for his deposition before Learned Local Commissioner on the date already fixed in the case i.e. on 23.09.2019 even if required to come on wheelchair. He further submits that six months time was granted for plaintiffs' evidence and plaintiffs want to examine only one witness and whose deposition would be completed on the date already fixed. He further submits that the delay may be condoned, subject to terms.

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I have considered the rival submissions made by learned Senior Counsel for both the parties and perused the material on record.

Issues in the case were framed on 21.05.2019. The plaintiffs were directed to file affidavits by way of examination in chief of their witnesses on or before 20.07.2019. It is prayed to condone the delay of 45 days in filing the affidavit by way of examination in chief of plaintiffs' witness.

Learned Senior Counsel for plaintiffs submits that plaintiffs want to examine only one witness whose affidavit has already been filed and the witness will appear and conclude the evidence on 23.09.2019 i.e. the date already fixed before Learned Local Commissioner.

Perusal of order dated 21.05.2019 shows that recording of evidence is to be completed within six months from the date of commencement of evidence. The grounds for non filing of affidavit of witness within the time as granted by Hon'ble Court has been shown to be the illness of the witness which is supported with medical records.

Considering the aforesaid facts into account and believing the assurance given by learned Senior Counsel for plaintiffs that plaintiffs witness will appear and conclude evidence on the date already fixed i.e. on 23.09.2019 before Local Commissioner, delay in filing of affidavit by way of evidence of plaintiffs' witness is hereby condoned, in the interest of justice, subject to payment of cost of Rs 15,000/- to counsel for defendants.

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The affidavit by way of evidence of plaintiffs' witness already filed is directed to be taken on record, subject to payment of cost as directed.

The IA stands disposed of accordingly.

**RAJ KUMAR TRIPATHI (DHJS)
JOINT REGISTRAR (JUDICIAL)**

SEPTEMBER 13, 2019

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