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

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Date of Decision: 08.09.2025

+ **CM(M) 1496/2025, CM APPL. 49294/2025 & 49293/2025**

MOHD ABID

.....Petitioner

Through: Mr. Nasir Aziz and Mr. Baasir Aziz,
Advocates.

versus

SAHIBA KOSAR QURESHI

.....Respondent

Through: Mr. Rakesh Kumar, Advocate
(*through videoconferencing*).

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. Petitioner has assailed order dated 09.07.2025 of the learned trial court, whereby cross-examination of PW-1 was closed.

2. It is contended by learned counsel for petitioner that having been ill, he had sent an adjournment request in advance to counsel for plaintiff (*present respondent*), so cross examination of PW1 ought not to have been closed. On being pointed out that there were multiple signatories to the *vakalatnama*, and one of the signatory counsel was present in court who ought to have carried out the cross-examination, learned counsel for petitioner states that the counsel present was not granted time to prepare the



brief, though to that effect, there is no mention in the impugned order.

3. Learned counsel for respondent appearing on advance intimation accepts notice and submits that in the interest of expeditious disposal of the suit, he has no objection if this petition is allowed subject to appropriate terms, otherwise the witness PW-1 has already been cross-examined extensively and even the medical documents filed by learned counsel for petitioner with this petition to show his illness are quite stale and not pertaining to the period in question. At this stage, learned counsel for petitioner submits that the medical documents filed with the petition would show his earlier illness but as regards illness on 09.07.2025, he has no medical record.

4. Thence, it not being in dispute that one of the counsel signatory to the *vakalatnama* of the petitioner was present before the trial court, failure to conclude the already extensive cross-examination of PW1, who is a wheelchair bound lady, was not justifiable. I find no error in the impugned order, more so because in the impugned order, there is not even a whisper of request from the counsel for petitioner present before the trial court to give him some time to prepare the brief.

5. But going by the cardinal principle of justice that disputes should be decided on merits and not on defaults, and also keeping in mind no serious objection from the other side, the present petition and the accompanying applications are disposed of granting one and only one opportunity to the petitioner to conclude cross-examination of petitioner on the next date (*to be*



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fixed by the learned trial court on the date already fixed) subject to the petitioner paying in advance through counsel for respondent cost of Rs.50,000/- to PW-1 by way of a demand draft in her name.

5.1 It is made clear that the quantum of cost has been fixed keeping in mind the above circumstances and that PW-1 is a wheelchair-bound lady.

5.2 The said cost shall be paid on the date already fixed before the trial court, i.e., 10.09.2025, after which the learned trial court shall fix the date of recording concluding part of cross-examination of PW-1.

5.3 It is also made clear that if the cost is not paid on 10.09.2025, no opportunity shall be granted to cross examine PW-1.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 08, 2025/*dr*