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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Date of Decision: 03<sup>rd</sup> July, 2025***  
+ **CM(M) 1122/2025, CM APPL. 38073/2025 & CM APPL. 38074/2025**  
**BALAJEE METAL INDUSTRIES**

.....Petitioner

Through: Mr. Hari Kishan with Mr. Akarsh  
Sharma, Advocate.

versus

**BIR BHAN JINDAL**

.....Respondent

Through: Mr. Sachin Agarwal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner is defending a suit which is commercial in nature.
2. His sole grievance is with respect to the fact that though the Court had allowed him to examine three witnesses but at the same time, it refused to issue summons them.
3. Learned counsel for the petitioner (defendant before the learned Trial Court) submits that out of such three witnesses, he was able to produce two witnesses before the learned Local Commissioner and two such witnesses have already been examined.
4. He, however, submits that with respect to the third witness i.e. Mr. Nitin Garg, he could not produce him as he was not under his control. He submits that Mr. Garg is rather employee of the plaintiff and, therefore, he is not going to appear unless there is issuance of summons by the Court.
5. It is quite evident from the order dated 08.05.2025 that when the defendant had moved an application before the learned Trial Court seeking



indulgence of the Court for production of the abovesaid witness, such prayer was declined, this is how the present petition has been filed.

6. It is also apprised that the matter is fixed today itself before the learned Trial Court for hearing final arguments. It is also argued by the learned counsel for that there is no intention to delay the proceedings of the case and he only seeks intervention of the Court as the witness in question is not under his control.

7. On the basis of request made by this Court, learned counsel for petitioner contacted Mr. Sachin Agarwal, learned counsel for respondent and Mr. Agarwal has joined the proceeding through *video conferencing*.

8. Mr. Agarwal, learned counsel for respondent submits that there is no such employee of plaintiff and the intention and objective behind moving such application is to delay the inevitable.

9. Learned Counsel for petitioner submits that he has already supplied the complete and correct address of such witness and he only seeks one opportunity to examine him with the assistance of the Court so that he, at least, appears before the Court pursuant to such summon. He also submits that in case the summons are received back unserved for any reason whatsoever, he would not make any further request in this regard before the learned Trial Court.

10. In view of the above, the present petition is allowed with request to learned Trial Court to issue summon with respect to the abovesaid witness.

11. In view of the above, the hearing of final argument may also be suitably deferred.

12. It is, however, clarified that the petitioner herein would be entitled to only one opportunity in this regard and it will be up to the learned Trial Court



to take further decision with respect to the abovesaid witness in terms of process report to be received by the Court.

13. The parties would appear before the learned Trial Court tomorrow itself.

14. Petition stands disposed of in aforesaid terms.

15. Pending applications also stand disposed of.

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

**(MANOJ JAIN)**  
**JUDGE**

**JULY 3, 2025/sw/shs**