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

% ***Date of Decision: 18th July, 2025***

+ CM(M) 1272/2025 & CM APPL. 42593-42595/2025

COL RAJESH SINGH GAUR & ANR.Petitioner

Through: Ms. Garima Sharma and Ms. Mahak
Rathree, Advocates

versus

NITYANAND GAUTAM & ANR.Respondent

Through: Mr. Tushar Giri, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners are defending a suit for possession, arrears of rent and injunction.
2. The defence of the petitioners has already been struck off and when the plaintiff i.e. PW1 Mr. Nityanand Gautam was present for cross-examination, the cross-examination could not take place on account of non-availability of main counsel.
3. Learned Trial Court, in its order dated 26.04.2025, recorded that said witness i.e. plaintiff was a senior citizen aged 82 years and the request of adjournment was causing undue harassment to him and, resultantly, the plaintiff's evidence was closed.
4. Fact, however, remains that petitioner has also taken exception to earlier order dated 12.12.2023, whereby their defence had been struck off and order dated 19.12.2024, whereby their application moved under Section 151 CPC seeking recall of such order was dismissed.



5. However, during course of arguments, learned counsel for petitioner has restricted their present petition only in relation to order dated 26.04.2025. She submits that in case one opportunity is granted, they would ensure that the witness is cross-examined, within the rights available to them.

6. Learned counsel for respondents/plaintiffs appears on advance notice and submits that though the petitioner does not deserve any further opportunity but he would have no objection if the aforesaid limited request is acceded to, *albeit*, subject to imposition of heavy cost.

7. Keeping in mind the overall facts of the case and in the interest of justice and also keeping in mind the gracious concession given by learned counsel for respondent, present petition is allowed with direction that the defendants are granted one last and final opportunity to cross-examine PW1 Mr. Nityanand Gautam. Since plaintiff is octogenarian and there are stated to be arrears of rental of around seventeen months, which fact has, though, been disputed, the cross-examination would be subject to cost of Rs. 20,000/-. It is, however, made clear that since defence of the defendants has already been struck off, such cross-examination would be within the aforesaid limited sphere and scope.

8. Next date before the learned Trial Court is stated to be tomorrow i.e. 19.07.2025 and the learned Trial Court, after ascertaining the availability of the counsel and convenience of said witness, would fix up a date and on such date, defendant would ensure that cross-examination is conducted and concluded.



2025:DHC:5811



9. Petition stands disposed of in the aforesaid terms.
10. Pending applications also stand disposed of in the aforesaid terms.
11. A copy of this order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 18, 2025/dr/shs