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

% **Date of Decision: 19th March, 2025**

+ **CM(M) 118/2025 & CM APPL. 3523/2025**

PRADEEP KUMAR

.....Petitioner

Through: Mr. Vijay Datt Gahtori, Advocate.

versus

MADAN SINGH & ANR.

.....Respondent

Through: Mr. Arun Kumar Yadav, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. This Court has gone through the order dated 20.01.2025 passed by the learned Predecessor Bench, which reads as under:-

"1. This is a petition under Article 227 of the Constitution of India impugning the order dated 04.10.2024 passed by the learned District Judge- 11, Central Tis Hazari Court, Delhi in case titled as Pradeep Kumar Vs. Madan Singh and Anr. in CS DJ 16303/2016.

2. Petitioner is the plaintiff in the suit for possession filed against the respondent.

3. Perusal of the record reveals that petitioner examined one witness Smt. Janki Devi as PW-2 by filing her affidavit. However, during cross examination dated 28.03.2017 she turned hostile, and so much so she denied her signatures on the affidavit as well as on the documents.

4. Petitioner filed an application under Section 39 of the Bhartiya Sakshya Adhiniyam 2023 with a prayer to send the signed and executed documents to handwriting expert.

5. Such application was dismissed vide impugned order dated 04.10.2024 with cost of Rs. 10,000/-.

6. The trial court observed that the witness was examined in the year 2017, and that the application was filed 7 years thereafter while the case was at the stage of final arguments. Trial court rejected the bald submissions made by the petitioner that the plaintiff was unwell.

7. After part submissions, learned counsel seeks permission to withdraw the present petition. However, he prays for indulgence of this



Court for the waiver of the cost on the ground of mercy.

8. The statement made by the learned counsel is taken on record.

9. The petition is dismissed as withdrawn. However, before considering the waiver of cost, it would be imperative to hear the respondents, and therefore, a limited notice of the petition in this regard to be issued to the respondents through all permissible modes, subject to the petitioner taking the requisite steps, returnable on 19.03.2025.

10. The matter be shown in the Supplementary List.

11. The order regarding payment of cost be kept in abeyance till the next date of hearing.”

2. Learned counsel for respondent has joined the proceedings through *video-conferencing* and leaves it to the discretion of the Court to pass appropriate order.

3. The petitioner herein is plaintiff before the learned Trial Court. He was aggrieved by order dated 04.10.2024 whereby, while dismissing his application, the plaintiff was also burdened with a cost of Rs. 10,000/-.

4. However, there is a subsequent development as it is apprised that the suit, as such, has also been dismissed by the learned Trial Court on 04.02.2025.

5. Keeping in mind the abovesaid peculiar subsequent development and the observation recorded in the last order sheet dated 20.01.2025, the cost stands waived.

6. The present petition, along with pending application, stands disposed of.

**(MANOJ JAIN)
JUDGE**

MARCH 19, 2025/ss/pb