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

% *Date of Decision: 29th April, 2025*

+ CM(M) 285/2025

SH.RAJESH KUMAR & ANR.

.....Petitioners

Through: Mr. Mahender Shukla, Advocate.

versus

SMT.DHARAM KUMARI@POOJA

.....Respondent

Through: Mr. Akash Jain, Advocate for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners herein are defending a suit for partition, possession and permanent injunction.
2. During the pendency of the abovesaid suit, the defendants (defendant nos. 1 & 2) sought permission to amend their written statement and such request was allowed by the learned Trial Court *vide* order dated 28.07.2022, subject to cost of Rs. 5000/-.
3. When the abovesaid suit was taken up on 19.09.2024, the learned Trial Court observed that the cost of Rs. 5000/-, which was later on reduced to Rs.3000/-, was still unpaid and observing that there was no appearance either from the side of the defendants, their opportunity to cross-examine PW was struck off.
4. When an application was moved under Section 151 CPC, seeking recall of the abovesaid order, such request was also turned down *vide* order dated 11.03.2025 holding that it was rather an application seeking review, which was



barred by time.

5. Mr. Akash Jain, learned counsel for respondent/plaintiff has joined the proceeding through *video conferencing* and when asked, he submitted that on 19.09.2024, the concerned witness i.e. PW Dharam Kumari @ Pooja was though present but her such presence is not reflected in the proceedings. He, in all fairness, admits that her affidavit for the purposes of examination-in-chief was not tendered in evidence by that time.

6. In view of the abovesaid, the opportunity of cross-examination had, clearly, not even reached and, therefore, there was no reason or occasion for the learned Trial Court to have closed the opportunity to cross-examine the plaintiff.

7. Undoubtedly, the defendant should have cleared the cost, without any unnecessary delay. Learned counsel for the petitioners/defendant nos. 1 & 2 submits that on 19.09.2024, he had to appear before this Court in W.P.(C) 13105/2024 in which his appearance is also duly recorded and after finishing the abovesaid matter, he, even, appeared before the learned Trial Court, which goes on to indicate that there was no deliberate inaction on his part to prolong the matter.

8. After hearing arguments from both sides and keeping in mind the facts that have been placed before this court, the present petition is disposed of with the direction that the defendants shall clear the unpaid cost on or before 14.05.2025 and, thereafter, the learned Trial Court, subject to its convenience and board position, would give an opportunity to them to cross-examine the plaintiff, after her examination-in-chief is recorded.

9. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 29, 2025/PU/JS