



2026:DHC:511



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

Date of Decision: 21st January 2026

+ CM(M) 161/2026

SAUD NASIR AND ANR

.....Petitioners

Through: Mr. Visheshwar Shrivastav, Adv.

versus

LATE MOHAMMAD SULTAN THROUGH HIS LR AND ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER (Oral)

Rajneesh Kumar Gupta, J.

1. This hearing has been conducted through hybrid mode.

CM APPL. 4012/2026 & CM APPL. 4013/2026 (Exemption)

2. Allowed, subject to all just exceptions. Applications stand disposed of.

CM(M) 161/2026 & CM APPL. 4011/2026 (for Stay)

3. The present petition has been filed by petitioners under Article 227 of the Constitution of India, 1950, seeking the following relief:

“a) Issue notice to the Counsel for Respondent No. 1 and other Respondents; and

b) Set aside the order dated 12/01/2026 and expunge the Examination in Chief & Cross Examination of OW-3 [Petitioner No. 2]; and

c) Direct the Ld. ACJ-cum-CCJ-cum-ARC (South-East) to conduct a de nova Examination in Chief of Petitioner No. 2”

4. Heard. Record perused.



5. Learned counsel for the petitioner has argued that the evidence of the OW-3 was record in his absence as he was unable to appear in the court. Because of his non-appearance, the evidence of the OW-3 has not been recorded properly and which has caused prejudice to the case of the objector.

6. The relevant portion of the impugned order dated 12th January, 2026, reads as follows:

“12.01.2026

Present: Sh. A.K Singh, Ld. counsel for DH alongwith SPA for DH.

Objector alongwith witness Moiz Mehtab in person.

The present matter had been fixed to be taken up at 12:30 PM today.

The present matter had been fixed to be taken up at 12:30 PM today.

At 12:30 PM

It is stated by objector that the cost imposed vide last date's order has not yet been deposited.

The objector has been apprised that the evidence of witness would not be recorded unless and until the said cost has been paid and deposited in terms of last date's order.

At this, it is stated by objector that he would furnish a receipt as to deposit of cost shortly.

At 01:04 PM

Present: Sh. A.K Singh, Ld. counsel for DH alongwith SPA for DH.

Objector alongwith witness Moiz Mehtab in person.

At this stage, receipt as to deposit of cost of Rs. 6,000/- has been furnished by objector. Same is taken on record. In



addition to that, cost of Rs. 6,000/- has been paid by objector to counsel for DH.

On being asked for multiple times about the counsel for objector, it is stated by objector that the recording of evidence may be started in absence of his counsel as his counsel is busy in another court.

It is also pertinent to mention that several calls have also been directed to be made to the counsel for objector on his mobile phone, by the court staff, however, the counsel is not picking up the phone.

Accordingly, OW-3 examined, cross examined and discharged.”

7. The impugned order shows that the matter was listed to be taken up at 12:30 p.m. It further records that OW-3 stated that his evidence may be recorded in the absence of his counsel, as his counsel is busy before another Court.
8. Keeping in view the fact that OW-3 himself consented to the recording of his evidence and that learned counsel for OW-3 failed to appear despite several calls being made, this Court does not find any infirmity in the impugned order, which is a reasoned order and the same is upheld.
9. Accordingly, the petition is dismissed as being devoid of any merit. Pending application(s), if any, also stand disposed of.

RAJNEESH KUMAR GUPTA, J

JANUARY 21, 2026/sds/isk