

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

Date of Reserve: 2nd February, 2010

Date of Order: 8th February, 2010

CM(M) No. 746/2008

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08.02.2010

Ravi Bhatia

... Petitioner

Through: Mr. (Dr.) S.P.Sharma, Advocate

Versus

The State of Delhi & Ors.

... Respondents

Through: Mr. J.K.Jain, Advocate for R-1

Mr. T.C.Sharma, Advocate for R-3,4 & 5

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

This petition has been filed under Section 151 CPC but has been entertained as Civil Miscellaneous (Main). By this petition, the petitioner has assailed order dated 26th April, 2008 rejecting the application of petitioner for examination of three more witnesses in support of the Testamentary Petition of the petitioner pending before the trial Court.

2. It is submitted by the petitioner that the junior Counsel of the petitioner, who attended the cross examination of PW1 & PW2, was not aware about consequences of re-examination or closing of evidence, he innocently agreed to close the evidence. The moment it came to the knowledge of the Senior Counsel, an application was moved for examination of more witnesses, which was denied by the trial Court. It is stated that the examination of these witnesses was necessary for the petitioner to prove his case. It is submitted that the case was in respect of a Will and one of the witnesses to be examined was second attesting witness of the Will. The petitioner has examined only one attesting witness but this attesting witness was won over by the opposite side therefore, there was necessity of examining second attesting witness.

3. It is submitted by respondent that the plea taken by the petitioner that the witness was won over was a false plea. Attesting witness of the Will Mrs. Neeru Singh was a clerk of the Counsel for the petitioner and had been working in the office of Counsel for years together. The question of her being won over does not arise. It is also submitted that she deposed in her examination-in-chief as per the case of the petitioner. During cross examination, truth was extracted from her about the execution of Will that does not amount to winning over a witness. The tool of cross examination itself is meant for extracting the truth. It is submitted that cross examination was done in presence of the petitioner and Counsel despite the fact that during cross examination the witness came out with truth, no request was made to the Court that other attesting witness was to be examined and the evidence was closed. The petitioner now wants to examine the second attesting witness after closure of the evidence of the defendant which simply means that the petitioner wanted to fill up the lacunae. It is submitted that the petitioner made effort to introduce the other witness by filing an application through other respondents who were not objecting to the Will. This application for examination of witness by other respondents was dismissed by the Court; no petition was filed against this order. The petitioner then moved the present application to circumvent this order. The previous order would amount to *res judicata*.

4. A perusal of order of trial Court would show that of the three proposed witnesses, two witnesses were found unnecessary. One witness sought to be examined by petitioner was Mr. Kewal Kishan Chopra on the ground that in his presence respondent no. 3 had received his share after sale of house. The trial Court observed that respondent no.3 had admitted receiving of Rs.3,85,000/- from his father on sale of property. He also admitted his signatures on receipt and admitted fact was not required to be proved and the examination of witness was unnecessary. The second witness sought to be examined was a witness from FSL Rohini but the Court found that there was no report by the expert, which could be proved by the expert and thus examination of this expert was disallowed. Regarding Mrs. Neeru Singh, the Court observed that nothing prevented the petitioner from examining Mrs. Neeru Singh after examination of Ms. Anita Mathur but the petitioner himself closed the evidence on 10th December, 2007 after cross examination of two PWs and thereafter the petitioner's evidence and the respondent's evidence was concluded.

5. I find no infirmity in the order of the trial Court. The trial Court was within its jurisdiction not to allow the examination of witnesses who were

unnecessary or superfluous. The plea taken by the petitioner that one of the witnesses was won over is also belied from the fact that the petitioner's counsel did not deny that this witness was working in his office for around more than 20 years and her examination chief was in consonance with the case of the petitioner. Cross examination is a tool for bringing out true facts. If during cross examination certain facts are stated by the witness that does not mean that the witness was won over. The witness is won over only when the witness, in examination-in-chief deposes contrary to the case of the petitioner. The petitioner had a right to re-examine the witness after the witness had been cross examined and if she had resiled from her previous statement. In this case, the petitioner neither re-examined this witness nor sought any clarification from the witness about her answers given during cross examination. It was not put to the witness that she had been won over and that is why she was giving false testimony. The witness cannot be branded as won over merely because during cross examination she disclosed the truthful facts. The petitioner did not examine another attesting witness and closed the evidence. I consider that the trial Court rightly disallowed the application.

I find no force in the petition. The petition is hereby dismissed.

February 08, 2010
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SHIV NARAYAN DHINGRA, J.