

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

+ **CM(M) 216/2015 & CM 4677/2015 (stay)**

% Decided on: 13th March, 2015

M/S OM DAIRY & ORS Petitioner
Through Mr. Vivek B. Saharya, Adv.

versus

PUSHPA SINGHAL Respondent
Through

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The respondent/plaintiff filed a suit for recovery of possession and damages/use & occupation charges against the petitioner/defendant herein. The plaintiff closed her evidence on 1st September, 2012 and the matter was listed for evidence of the petitioner/defendants on 18th October, 2012 when examination-in-chief of DW-1 and DW-2 was recorded and DW-1 was partly cross-examined. On 10th December, 2012 the plaintiff/respondent did not appear and thus the matter was adjourned to 11th January, 2013 when the Presiding Officer was on leave. Again on 1st February, 2013 neither the plaintiff nor her counsel appeared and the matter was adjourned to 20th February, 2013. Thus the right of the plaintiff to cross-examine defence witnesses was closed and the matter was listed for remaining evidence of the defendant on 20th February, 2013. DW-3 and DW-4 were examined in chief,

however as the plaintiff and her counsel were not present, the Court dismissed the suit in default for non-appearance.

2. The respondent/plaintiff filed an application under Order 9 Rule 9 CPC read with Order 7 Rule 14 and Section 151 CPC which came up for consideration on 15th March, 2013. In the application the respondent/plaintiff sought orders for recalling the case allowing the plaintiff to cross-examine the defendant and for placing on record additional documents. However vide noting dated 8th July, 2013 in the application the learned counsel noted in hand that he was pressing the application only under Order 9 Rule 9 CPC and would file a separate application under Order 7 Rule 14 CPC, if the suit is allowed to be restored. It is thus apparent that subject to restoration the respondent did not press the rest of the reliefs. On 8th August, 2013 the suit was restored to its original number and at the stage at which it was pending on 20th February, 2013. Thereafter on 9th September, 2013 two witnesses of the defendant i.e. DW-3 and 4 were cross-examined. The respondent/plaintiff filed an application for permission to cross-examine DW-1 on 27th September, 2013. Vide order dated 20th November, 2014 the learned Trial Court allowed the application of the plaintiff/respondent dated 27th September, 2013 granting him permission to cross-examine DW-1 and DW-2.

3. Aggrieved by the order dated 20th November, 2014 the petitioner prefers the present petition. The grievance of the petitioner is that the application wherein the impugned order was passed was not maintainable as the said relief had been withdrawn in the composite application filed by the respondent/plaintiff under Order 9 Rule 9 CPC wherein while withdrawing

the other reliefs no right was reserved for filing any further application nor the permission was sought.

4. As noted above though the application under Order 9 Rule 9 CPC was a composite application, however the petitioner on 8th July 2013 pressed the said application only under Order 9 Rule 9 CPC and with regard to other reliefs it was stated that he would file a separate application if the suit was restored. Thus, it cannot be held that the prayer for recalling of the defence witnesses for cross-examination had been disallowed earlier and the same having attained finality, no permission to DW-1 and DW-2 for cross-examination could be given.

5. The order dated 8th August, 2013 passed by the learned Trial Court also notes that the application was treated only as an application under Order 9 Rule 9 CPC and the application was decided only on that count. Consequently, I find no infirmity in the impugned order.

6. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 13, 2015
‘ga’