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

\+ CM(M) 1118/2016 and CM Nos. 41320-41322/2016

DEPUTY COMMISSIONER (SOUTH-WEST) & ANR

..... Petitioners

Through Mr. J M Kalia, Advocate with
Ms. Bhawana Garg, Advocate

versus

ARVIND KUMAR & ANR ..... Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 07.11.2016

1. By way of the present petition filed under Section 227 of the Constitution of India, petitioners seek to impugn the order dated 27.10.2016 passed by the Trial Court whereby final opportunity was given to the Dy. Commissioner to appear in person before the Court failing which appropriate steps would be taken to secure his presence before the court.

2. Perusal of the record shows that the background of the impugned order is reflected in order dated 12.05.2016 whereby the Trial Court noted that the witness i.e. record keeper from the office of Dy. Commissioner (South-West) Old Terminal Tax Building, Kapashera, New Delhi is not present despite service. The court noted that in other cases also the said witnesses did not appear. Hence, notice was issued to the Dy.

Commissioner concerned to explain by way of affidavit as to why officials from his office do not appear as a witness before the court along with summoned record despite service of summons. Record keeper from the office of the Dy. Commissioner was also directed to remain present in person in the court along with the summoned record. Dy. Commissioner was also directed to ensure the presence of record keeper before the court on the next date of hearing. On the next date of hearing i.e. 02.06.2016, no explanation was furnished by the Dy. Commissioner and record keeper was also not present. Hence, the court directed the Dy. Commissioner to appear in person before the court along with an explanation. On 14.07.2016 though the Dy. Comissioenr was not present, concerned official from the office of Dy. Commissioner was present and he was examined as PW-8 and discharged.

3. Learned counsel for the petitioner submits that the concerned official has already appeared and has been examined. He further submits that Govt. of NCT of Delhi is not a party to the present proceedings and Dy. Commissioner is neither necessary nor a proper party to the present suit. He has placed reliance upon judgment of the Hon'ble Supreme Court of India titled as ***State of Gujarat v. Turabali Gulamhussain Hirani & Anr. AIR 2008 SC 86*** to contend that though the High Court has power to summon the officials, but the same should be don e in very rare and exceptional cases where there are compelling circumstances to do so. Such summoning orders should not be passed lightly or at the drop of a hat.

4. Reliance is also placed on CA 5600/2006 tilted as ***R S Singh v. UP Malaria Nirikshak Sangh & Ors.*** wherein also similar observations were made about summoning of high officials.

5. Learned counsel for the petitioner submits that the Dy. Commissioner being a senior officer of the District, is entrusted with tasks in public dealing and it is difficult for him to appear in person, without disrupting the office.

6. In the interest of justice, order dated 27.10.2016 is modified. For the time being, let the SDM concerned appear before the court on the next date of hearing to explain whether steps have been taken by his office for ensuring that in future, in cases where summons to officials from the office of Dy. Commissioner are served, no default takes place in appearance.

7. In view of the above clarification to the impugned order, this petition stands disposed off. All pending applications also stand disposed of.

JAYANT NATH, J

NOVEMBER 07, 2016/sm