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

+ **FAO(OS) 440/2015**

UPMA PURI

..... Appellant

Represented by: Mr.Sanat Kumar, Advocate
with Ms.Puja Kashyap,
Advocate

versus

MANJIT SODHI

..... Respondent

Represented by: Mr.Amit Mahajan, Advocate
with Mr.Gaurav Dwivedi,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **10.02.2016**

1. Record of the suit has been perused.
2. The appellant is the plaintiff. The respondent is the defendant.
3. Post pleadings being completed, on April 17, 2009 issues were settled. The plaintiff was directed to lead evidence. Examination-in-chief was directed to be by filing affidavits of the witnesses of the plaintiff.
4. The plaintiff filed the list of witnesses as also affidavits by way of examination-in-chief of two witnesses. On March 17, 2010 plaintiff tendered her affidavit by way of examination-in-chief as PW-1.
5. On the same day i.e. March 17, 2010 PW-1 was partly cross-examined. For further cross-examination the date of June 03, 2010 was notified.

6. Before that day, the plaintiff filed IA No.5428/2010 under Order 7 Rule 14 read with Section 151 of the Code of Civil Procedure. Prayer made therein was to permit the plaintiff to file four additional documents. IA No.5428/2010 was allowed on May 28, 2010. Cost was imposed, which we record has admittedly been paid.
7. Additional documents were brought on record.
8. On October 26, 2010 the said four documents were put to the defendant to be admitted or denied. The defendant denied all four documents, a fact recorded in the order dated October 26, 2010.
9. Matter lingered on.
10. Plaintiff thereafter filed IA No.10696/2011. Order 7 Rule 14 of the Code of Civil Procedure was again relied upon. Prayer made by the plaintiff was to be permitted to file twelve documents.
11. IA No.10696/2011 was allowed on May 26, 2012, but regrettably without a consequential direction. The same had to be put to the defendant for admission/denial. Depending upon whether the defendant admitted or denied the documents further course has to be chartered.
12. Cost imposed as a condition for taking on record the twelve documents was admittedly paid.
13. Neither party requested the learned the learned Joint Registrar to fix a date, calling upon the defendant to admit or deny said documents. On July 25, 2012, the learned Joint Registrar passed an order noting that IA No.10696/2011 being allowed, liberty had to be granted to the plaintiff to file an additional affidavit by way of examination-in-chief. Thereafter at request of parties matter was referred to mediation. Mediation failed. The

plaintiff filed additional affidavit by way of examination-in-chief of her two witnesses on September 02, 2014.

14. Cross-examination of PW-1 was not conducted thereafter. Matter lingered on. On September 27, 2014 the additional affidavit by way of examination-in-chief of PW-1 and PW-2 was tendered.

15. On January 17, 2015 the witnesses of plaintiff's were to be cross-examined. No cross-examination was conducted because PW-1 had undergone two surgeries.

16. Proceedings were adjourned for April 18, 2015, on which date IA No.7807/2015, filed by the defendant, was placed before the learned Joint Registrar. Wrongly recording that the number of IA as IA No.7801/2015, the learned Joint Registrar dismissed the said application filed by the defendant in which the defendant sought clarification/modification/correction of the order dated July 25, 2012 and to strike off the additional affidavit by way of examination-in-chief filed on September 02, 2014.

17. The legal reasoning in the application was that once a witness is under cross-examination the witness cannot be further examined-in-chief.

18. The application was dismissed on two reasons by the learned Joint Registrar. The first was that the order dated July 25, 2012 was in consequence to the mother order dated May 26, 2012. The second was the delay in filing application which was of two years and eight months. Incidentally, it was recorded that the order dated July 25, 2012 was passed in the presence of counsel for the defendant, and by which observation, we understand that the learned Joint Registrar wanted to convey that the order dated July 25, 2012 was in the knowledge of the defendant and having a probable bearing on the fact that IA No.7807/2012 was filed after two years

and eight months.

19. Onward march led the defendant, as advised by the counsel, to file OA No.188/2015. It is an Chamber Appeal laying a challenge to the order dated April 18, 2015 passed by the learned Joint Registrar.

20. Vide impugned order dated June 29, 2015, OA No.188/2015 has been allowed by the learned Single Judge noting that in his opinion additional evidence was not permissible to be adduced after cross-examination of the witness of the plaintiff had commenced and a waiver by a party would be of no consequence.

21. The learned Single Judge has noted that whereas procedural law may be the hand-maiden of justice, but it is equally true that procedure cannot subvert the process of law or accord undue advantage to a defaulting party. The learned Single Judge has noted that introduction of additional evidence by examination-in-chief at the stage when cross-examination commenced would put the defendant at a position of disadvantage.

22. The reasoning by the learned Single Judge is contrary to law. The defendant would not be disadvantaged by the plaintiff being permitted to file additional affidavit by way of examination-in-chief for the reason with reference to said testimony the defendant can cross-examine the witness.

23. Even otherwise, in law, after evidence is led it is permissible for a party to move an application summoning other witnesses or recall a witness already examined for purposes of further examination-in-chief or cross-examination.

24. That apart, the mother order dated May 26, 2012 allowing IA No.10696/2011 had to be taken to its logical conclusion because the said order was not challenged.

25. As noted above, as per said order the plaintiff was permitted to file twelve additional documents subject to payment of cost which was received by the plaintiff. It would be useless to take on record additional documents without permitting the same to be proved.

26. The appeal is accordingly allowed. Impugned order dated June 29, 2015 is set aside. The order dated April 18, 2015 passed by the learned Joint Registrar is restored.

27. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 10, 2016

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