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

+ CM(M) 197/2017

SUNNI MAL

..... Petitioner

Through: Mr.Vikas Gautam, Advocate.

versus

BRAHM PARKASH

..... Respondent

Through: Mr.Ishu Arora and Ms.Priyanka
Arora, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **25.05.2017**

CM(M) No.197/2017

1. By way of this petition, the petitioner/tenant is challenging the order dated 4th June, 2016 whereby the opportunity given to the petitioner to cross examine PW-1 has been closed by the learned Trial Court. Challenge has also been made to the order dated 5th December, 2016 whereby the application seeking review of the order dated 4th June, 2016 has also been dismissed.
2. Learned counsel for the petitioner submits that RC.Rev. No.246/2014 which was filed by the respondent/landlord has been disposed of by this Court on 25th November, 2014 by passing the following order:-

'1. After arguments, this petition is disposed of with the consent order that both the parties will not get more than two opportunities to complete their evidence in the trial court and the trial court is requested to complete hearing of the final arguments within three months of completion of evidence.

2. It is also agreed that none of the parties will take unnecessary adjournments and if unnecessary adjournments are sought, the Rent Controller/Additional Rent Controller can impose heavy costs on the party seeking unnecessary adjournments.

3. The Additional Rent Controller is requested to expedite the disposal of the eviction petition.

4. Petition is disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.

Dasti to counsel for the parties.'

3. Learned counsel for the petitioner submits that grant of two opportunities does not restrict the opportunity required to cross examine a witness, hence the impugned orders are liable to be set aside.

4. It is necessary to record her that while disposing of RC.Rev.No.246/2014, this Court also directed that unnecessary adjournments will not be taken by the parties and learned ARC was directed to expedite the disposal of the eviction petition. Thereafter on 8th December, 2014 examination-in-chief by way of affidavit of witness (PW-1) was filed and he was partly cross examined. Then the petitioner filed an application praying for appointment of guardian *ad litem* as the petitioner was not of sound medical capacity, which was declined.

5. Again petitioner filed CM(M) No.840/2015 which was disposed of by passing the following order:-

'CM(M) 840/2015

1. This petition has been filed with a prayer to set aside the orders dated 4th June, 2015 and 5th August, 2015 passed in E No.62/14/12 whereby application of the petitioner under Section 151 CPC for appointment of Guardian ad-litem/next friend has been rejected.

2. Mr.Vikas Gautam, advocate appearing on behalf of the petitioner submits that the petitioner is 86 years old and suffering from Pseudo dementia and his memory is impaired. The petitioner was produced and examined before the learned Trial Court on 24th March, 2015. There is Court observation that Mr.Sunni Mal is able to hear but not

able to reply. He is not of sound physical health. Certificate from IHBAS was produced regarding mental condition of the petitioner despite that the learned Trial Court has not appointed Guardian ad-litem/next friend for the petitioner and in the absence of clear instructions from the petitioner he is unable to proceed with the trial.

3. On being questioned by the Court as to on whose instructions he has filed this petition, Mr. Vikas Gautam, Advocate submitted that grandson of the petitioner is giving instruction to him and produces the petitioner before the learned Trial Court on 24th March, 2015.

4. Mr.V.K.Khurana, learned counsel for the respondent submits that he does not want to enter into any controversy on this issue and appropriate direction in this regard may be issued by this Court and if necessity is felt he has no objection if Guardian ad-litem is appointed in this case.

5. Order XXXII CPC deals with the suits by or against the minor and persons of unsound mind. Order XXXII Rule 15 CPC provides as under:-

“15. Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”

6. In view of the submissions made by the learned counsel for the parties and the medical record produced on behalf of the petitioner, learned Trial Court is directed to examine the Doctor from IHBAS who has issued the certificate about the mental condition of the petitioner.

7. It is informed by the learned counsel for the parties that matter is listed for 20th November, 2015 before the learned Trial Court. Learned counsel for the petitioner shall take steps to summon the concerned doctor from IHBAS Hospital who has examined the petitioner and issued the certificate. On the date of examination of the

Doctor, the petitioner shall also be produced before the learned Trial Court to enable the learned Trial Court to satisfy itself whether it is a case requiring appointment of guardian ad-litem/next friend.

8. *The petition is disposed of in above terms.*

9. *Copy of this order be sent to learned Trial Court for compliance and be also given dasti to learned counsel for the parties, as prayed.'*

6. Thereafter guardian *ad litem* was appointed and opportunities have been given to the petitioner to cross examine PW-1. Detailed cross examination of PW-1 has already been done by the learned counsel for the petitioner and as per the counsel for the petitioner, the witness is required to be further cross examined at length.

7. The learned ARC, vide impugned order dated 4th June, 2016, has closed further cross examination of PW-1.

8. The order dated 4th June, 2016 was again impugned by filing CM(M) No.646/2016 which was disposed of on 11th July, 2016 by passing the following order:-

'By the present petition, the petitioner seeks liberty to complete the cross-examination of PW1 which was closed by the learned trial court on 04.06.2016.

The learned counsel for the petitioner has submitted that PW1 is a slow witness and takes his own time to answer/question. Because of this there was delay in completion of the cross-examination. Given the nature of the matter, complete cross-examination of PW1 is necessary. It is contended that the request for the next date was bona fide and there were no intention to delay.

It is further submitted that on 04.06.2016, the learned counsel for the petitioner had cross-examined PW1 for two and half hour, i.e. from 11.00 am to 1.20 p.m. On account of this long

period spent for the cross-examination, it was not possible to continue the matter after lunch.

A perusal of the impugned order dated 04.06.2016 shows that these submissions have not been made before the learned trial court.

Liberty is granted to the petitioner to move the learned trial court with a review petition giving details as to why the cross-examination was not completed on 04.06.2016.

With these observations, the present petition is disposed off. Dasti.'

9. The review petition filed by the petitioner on 2nd August, 2016 has been dismissed by the learned Trial Court on 5th December, 2016 recording that the opportunities as per direction of the High Court have been granted to conclude the evidence.

10. Learned counsel for the petitioner has submitted that grant of two opportunities does not mean that right of the petitioner to cross examine PW-1 has to be curtailed.

11. Suffice it to record here that at no point of time, the petitioner sought review/modification of the order dated 25th November, 2014 passed by this Court Rc.Rev.No.246/2014. The learned Trial Court was required to comply with the order passed by this Court.

12. Finding no merits, the petition is dismissed.

CM No.6489/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 25, 2017/'st'