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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 82/2017 & CM No.12704/2017

GAYATRI GUPTA

..... Petitioner

Through: Ms.Shilpa Sharma & Mr.Narender
Singh, Advocates.

versus

RUBY SHARMA & ORS

..... Respondents

Through: Mr.Punit Kumar Bhalla, Advocate for
R-2 & R-3
Mr.Dinesh Kumar Gupta, Mr.Vidit
Gupta Mr.Prakash Pandey,
Advocates for R-5.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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19.05.2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India feeling aggrieved by the order dated 3rd February, 2017 passed by learned ADJ in Civil Suit No.57/2016 whereby the application under Section 151 CPC filed by the petitioner for examining her husband Sh.S.P.Gupta as witness has been dismissed by the learned Trial Court.

2. Notice of the petition was sent to the respondents.

3. On behalf of the petitioner Mr.Narender Singh, Advocate has submitted that Sh.S.P.Gupta, husband of the petitioner is a layman. He was not aware of the meaning of being 'dropped' from the list of witnesses and

he has not informed the Court that he will not examine himself as a witness. Learned counsel for the petitioner has submitted that examination of Sh.S.P.Gupta as witness is necessary in Civil Suit No.57/2016 filed by Smt.Gayatri Gupta, the petitioner who is also wife of Sh.S.P.Gupta.

4. Learned counsel for the respondent has placed on record the copy of the proceedings dated 12th January, 2017 before the learned Trial Court and submitted that this order has been intentionally withheld by the petitioner. While drawing the attention of this Court to the proceedings dated 12th January, 2017 when the Court dropped the name of Sh..P.Gupta from the list of witnesses, it has been contended that submission of Sh.S.P.Gupta that he would not examine himself as witness has been recorded by the learned Trial Court and thereafter he was permitted to remain present in the Court during cross examination of his wife, PW-1 Smt.Gayatri Gupta.

5. I have perused the Court proceedings dated 12th January, 2017 as well as the impugned order dated 3rd February, 2017. The proceedings dated 12th January, 2017 reveal that while the civil suit has been filed by Smt.Gayatri Gupta, her husband Sh.S.P.Gupta appears as her power of attorney. On 12th January, 2017, learned Trial Court has recorded that Sh.S.P.Gupta himself being a witness was not supposed to be present during the course of examination of PW-1. Learned Trial Court has specifically recorded that when Sh.S.P.Gupta submitted that he will not examine himself as witness, only then he was dropped from the list of witnesses and permitted to be present during the cross examination of PW-1 as her power of attorney.

6. In the order impugned herein while rejecting the contention of the petitioner that on 11th January, 2017 she has undergone some treatment at Safdarjung Hospital and she was under the influence of drugs/medicines.

She was having severe pain also due to her illness, therefore, she sought adjournment which was declined or that her husband is a layman and not aware of the Court proceedings have been dealt with by the learned Trial Court as under:-

“Heard. Record perused.

On perusal of the Court record, it reveals that the husband of the plaintiff has been representing the plaintiff and pursuing this case on behalf of the plaintiff before the Hon'ble High Court of Delhi and thereafter its transfer to the District Court. He has produced his authorization letter of his wife in his favour on 13.03.2014 and issues were framed in his presence on 17.07.2014. On 23.09.2014, it has been specifically mentioned in the order sheet ‘Ld. Counsel further submits that the husband of the plaintiff stated in the Court that he shall pursue the matter on his own, however, the affidavit of plaintiff bears the signature of the previous counsel.’

The averments of the applicant/plaintiff in the application that the adjournment was sought on behalf of PW-1 on the last date of hearing due to her illness is contrary to the record as no such request was made on that date. Husband of the plaintiff was asked not to be present during the cross examination of PW-1 however, he submitted that he would not examine himself as a witness and on his submission he was dropped from the list of witness and allowed to be present during the cross examination of PW-1 as per power of attorney. In fact, during the cross examination of PW-1 at several occasions when the questions were put to PW-1, husband of the plaintiff Sh.S.P.Gupta was giving answer and for that he was warned. The averments made in the application that Sh.S.P.Gupta, husband of the plaintiff is layman and was not aware of the Court proceedings is devoid of any merits.

Further, the affidavit filed by husband of the plaintiff is also perused. He is deposing in affidavit to have signed on the agreement to sell specific performance of which is being sought by the plaintiff, however, in the entire plaint nowhere this fact has been pleaded and therefore, the pleadings of the applicant/plaintiff prima facie appears to beyond pleadings.

In view of my above findings, the application under Section 151 CPC of the plaintiff is dismissed.

Lat and final opportunity is given to the plaintiff to adduce RPE, if any for 25.02.2017. Advance copy of affidavit RPE, if any be given to counsels for the opposite party.”

7. Perusal of the order impugned shows that the husband of the petitioner had been conducting the case on her behalf not only in High Court but also after the transfer of the case to the District Court on enhancement of the pecuniary jurisdiction of the learned Trial Court. So the contention of the petitioner that her power of attorney, her husband Sh.S.P.Gupta is a layman and that he does not understand the Court proceedings, is contrary to record. If the petitioner was not well on the day of her examination she could have sent her medical certificate through her power of attorney i.e. her husband who himself was also cited as witness in the list of witnesses. But no such record was annexed with the application under Section 151 CPC.

8. The averments made in the application that PW-1 was unwell is also contrary to her conduct before the learned Trial Court on 12th January, 2017. The learned Trial Court has specifically noted that when counsel for defendant No.5 was not available and adjournment was sought, it was vehemently opposed by PW-1 Smt.Gayatri Gupta and thereafter the matter was adjourned to next date i.e. 13th January 2017 without any objection from the petitioner (PW-1).

9. So far as the examination of Sh.S.P.Gupta, the attorney and husband of the petitioner is concerned, after exercising his option to remain present during the cross examination of his wife and even trying to answer on her behalf, now he cannot claim that he is a layman and was not aware of the meaning of being dropped from the list of the witnesses.

10. Legal position with regard to correctness of judicial proceedings has been summarised in the case of State of Mharashtra vs. Ramdas Shrinivas Nayak & Anr. AIR 1982 SC 1249 wherein it was held that Courts have to take as final what is recorded in judicial proceedings and if what is factually recorded in a judicial order is not correct, then, the person who states that the factual statement is incorrectly recorded in the order must move to that Court which recorded that factual statement at the earliest stage when the matter is fresh in the mind of the Court, and if that is not done, the matter rests there and thereafter such a factual statement made in the judgment of the lower Court cannot be challenged in an appeal filed in the appellate Court.

11. In view of the above discussion, the petitioner cannot be permitted to raise a new ground to ensure that whatever lacuna has been left in her statement is filled by examining her husband.

12. The order impugned herein does not suffer from any illegality or infirmity.

13. The petition is dismissed.

PRATIBHA RANI, J.

MAY 19, 2017

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