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

+ C.R.P. 95/2016

SHREEKANT GUPTA

..... Petitioner

Through: Mr.Ashwath Sitaram, Advocate.

versus

SWATI MADAN

..... Respondent

Through: Mr.Jawahar Chawla, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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22.05.2017

1. This petition has been filed by the petitioner under Section 115 of the Code of Civil Procedure, impugning the order dated 30th May, 2016, pleading as under:

“i. That this Hon'ble Court may be pleased to set aside order dated 30th May, 2016 passed by Ms.Prabh Deep Kaur, Ld. Civil Judge in CS No.275/2015 titled Shreekant Gupta vs. Swati Madan in as much as the POA holder of the defendant therein has been permitted to take the stand on her behalf.

ii. pass such other and further order/orders as may be deemed fit and proper on the facts and in the circumstances of this case.”

2. The petitioner is aggrieved by the order dated 30th May, 2016 in Civil Suit No.275/2015, whereby the objection of the petitioner regarding opting of Mrs.Poona Madan as DW-1 and defendant herself not entering into the C.R.P. 95/2016

witness box, though noted by the learned Trial Court has been rejected on the ground that written statement has been filed by Mrs.Poonam Madan as Special Power of Attorney. The impugned order reads as under:-

CS No.275/2015

Shreekant Gupta & Anr. Vs Swati Madan

30.05.2016

*Present: Sh.Ashwat, Ld.counsel for plaintiff with witness.
Sh.Raj Kumar, Ld.counsel for defendant.*

Defendant has moved an application for waiving off the cost imposed on defendant. Be taken on record.

Heard. Application is dismissed. Defendant has paid cost of ₹1,000/- to the plaintiff.

*Sd/-
CJ/SE/Saket/ND/30.05.2016*

(At 11:15 AM)

*Present: Sh.Ashwat, Ld.counsel for plaintiff with witness.
Sh.Raj Kumar, Ld.counsel for defendant.*

PW1 cross examined and discharged. By way of separate statement, PE stands closed.

At this stage, Ld.counsel for plaintiff has objected to the examination of Mrs.Poonam Madan as DW1 on the ground that defendant herself has not entered into witness box and Mrs.Poonam Madan cannot be examined as SPA holder of defendant.

Arguments heard. Record perused.

Perusal of record shows that WS has been filed by the SPA holder of defendant i.e. Mrs.Poonam Madan and in replication no such averment was taken by the plaintiff. Moreover, plaintiff is at liberty to cross examine the witness on this point but at this stage, prima facie Court cannot adjudicate the issue whether SPA holder of defendant should not be allowed to enter into witness box as DW considering the fact that original SPA has been filed on record.

Put up for DE on 16.07.016.

Defendant is directed to file affidavit of witnesses on/or before next date of hearing with an advance copy of that to the plaintiff at least five days before next date of hearing against due acknowledgement of receiving.

Sd/-

CJ/SE/Saket/ND/30.05.2016

3. When the written statement has been filed by the defendant through her Special Power of Attorney, the petitioner/plaintiff cannot object to her examination as defence witness. The effect of the defendant not entering into the witness box in her defence is not to be considered by this Court in exercise of power under Section 115 of the Code of Civil Procedure.
4. The order impugned herein does not suffer from any illegality or perversity.
5. The petition is dismissed.

CM No.24764/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 22, 2017

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