

\$~23

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

+ CM(M) 405/2017

BIMAL KAPOOR

..... Petitioner

Through: Mr.Mukesh M.Goel, Advocate.

versus

STATE & ORS

..... Respondents

Through: Mr.Deepak Dewan, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

17.04.2017

CM Nos.14042/2017 & 14043/2017

1. Exemption allowed subject to all just exceptions.
2. Applications are disposed of.

CM(M) 405/2017

1. The petitioner, who is respondent No.2 in Probate Case No.92/2014, is aggrieved by the order dated 17th March, 2017 whereby her right to cross examine PW-3 and PW-4 has been closed by the learned ADJ.
2. Learned counsel for the petitioner submits that vide order dated 20th July, 2017 prayer of the petitioner for granting an opportunity to cross examine PW-3 and PW-4 has been allowed by the learned ADJ subject to cost of ₹1000/- and matter was listed for PE on 17th March, 2017. He further submits that since there was no direction to the petitioner herein for summoning the witnesses for 17th March, 2017, the right of the petitioner to

CM(M) 405/2017

Page 1 of 4

cross examine PW-3 and PW-4 could not have been closed on the ground that her conduct was negligent.

3. I have perused the record. The proceedings for the relevant dates before the learned ADJ i.e. proceedings dated 20th January, 2017 and 17th March, 2017 are extracted hereunder:-

‘20.01.2017

*Present : Sh.Deepak Dewan, counsel for the petitioners with petitioner.
Sh.Himanshu proxy counsel for Sh.Mukesh M.Goel, counsel for respondent No.2.
Sh.Sanjay Aggarwal, counsel for respondent no.3.
Sh.Sanjeev Manchanda, counsel for respondent no.4.
None for LRs of respondent no.5 and respondent no.6 and 7.*

Two applications under order 18 rule 17 A and Section 151 CPC filed on behalf of respondent No.2 & 3 respectively for giving opportunity for cross-examination of PW-3 & PW-4 who were examined on 21.10.2016 and 8.12.2016.

No reply filed by ld. Counsel for the petitioner to the above said applications and requested that applications may be allowed subject to heavy cost.

Heard. In the interest of justice, above applications are allowed subject to payment of cost of ₹1,000/- each. It is made clear that no further opportunity shall be granted and in the absence of counsel for the parties and the Court shall proceed as per law.

Put up the case for P.E. on 17.03.2017.

*Sd/-
(ADJ-02, West/Delhi)
20.01.2017*

17.03.2017

*Present : Sh.Deepak Dewan, counsel for petitioners.
Sh.Mukesh M.Goel, counsel for respondent No.2.
Proxy counsel for Sh.Sanjay Aggarwal, counsel for respondent no.3.*

*Sh.Sanjeev Manchanda, counsel for respondent no.4.
None for LRs of respondent no.5 and respondent no.6 and 7.*

No PW present for cross-examination as respondent no.2 & 3 failed to take any steps as per last order. On the last date of hearing it was made clear that in case of default no further opportunity shall be granted. Therefore, I close the right of respondent No.2 & 3 to cross examine PW-3 & PW-4 because of their conduct and negligent act.

Now come up for remaining P.E. on 05.05.2017.

*Sd/-
(ADJ-02, West/Delhi)
17.03.2017*

4. Learned counsel for the respondent (who is petitioner No.1 in Probate Case No.92/2014) submits that he has no objection if one opportunity is granted to the petitioner herein to cross examine PW-3 and PW-4 subject to such terms and conditions as deemed fit by this Court.
5. In view of the submissions made on behalf of the parties, the petition is allowed to the extent that one opportunity is given to the petitioner (respondent No.2 in Probate Case) to cross examine PW-3 and PW-4 subject to payment of ₹4000/- in addition to the cost of ₹1000/- imposed by learned ADJ i.e. total cost of ₹5000/-.
6. It is informed by learned counsel for the parties that the matter is listed before the learned ADJ on 5th May, 2017.
7. The parties are directed to appear before learned ADJ on the next date of hearing i.e. 5th May, 2017.
8. Learned counsel for the respondent herein submits that he shall produce the witnesses i.e. PW-3 and PW-4 on 5th May, 2017 either by making request to them or by summoning them through process of Court.

9. It is directed that cost of ₹5000/- shall be paid by the petitioner before commencing the cross examination of PW-3 and PW-4.
10. It is made clear that no further adjournment shall be given to the petitioner for the above purpose by the learned ADJ. However, in case the Presiding Officer happens to be on leave on that date, the matter shall be listed on the next working day for the said purpose.
11. Petition stands allowed in above terms.
12. A copy of this order be sent to the concerned Trial Court for information and compliance.
13. As prayed, copy of the order be also given dasti to learned counsel for the parties.

CM No.14041/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

APRIL 17, 2017

'st'