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

+ CM(M) 1219/2016

GEETA SOOD & ANR Petitioner

Through Mr.Aaditya Vijaykumar and Ms.Liza
M.Baruah, Advs.

versus

SUSHIL SOOD Respondent

Through Mr.Ashwin, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.01.2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to challenge the order dated 21.10.2016 by which order the trial court disallowed the request of the petitioner to be able to lead further evidence. The petitioner No.1 is the daughter-in-law of the respondent. The respondent has filed a suit for possession and eviction of property being A-704, 7th Floor, Bhairwa Bharti CGHS Limited, I Blok, Plot No.24, Sector-12, Dwarka, Delhi.

2. On 21.10.2016 the trial court cross-examined the petitioner as DW-1. It also noted that the petitioner has filed a list of witnesses where nine more witnesses have been shown. However, the trial court concluded that all other witnesses are immaterial to the issues involved and closed the evidence of the petitioner by a separate recorded statement. Immediately thereafter an application under section 151 CPC for issuance of summons to the witnesses was filed by the petitioner. The application was dismissed by

the impugned order on the ground that the petitioner cannot summon any witness when they have already closed their evidence.

3. I have heard learned counsel for the parties. Learned counsel appearing for the petitioner has submitted that the case of the petitioner is that the property was bought by her and her husband from joint funds though the property was registered in the name of her husband. She submits that her husband has now executed a Gift Deed in favour of the respondent. Hence, it is submitted that there is a necessity to summon the said witnesses who are stated in the list of witnesses who are bankers where the bank accounts were opened by the petitioner.

4. Learned counsel appearing for the respondent has pointed out that there is only one issue framed i.e. as to whether the respondent is entitled to possession of the property. He submits that evidence sought to be led is entirely immaterial.

5. I may note that in the list of witnesses filed, the petitioner has mentioned nine witnesses including herself and her daughter.

6. In her affidavit by way of evidence she has mentioned about a loan account from Punjab and Sind Bank. She has also sought to place on record copy of passbooks of the accounts in Syndicate Bank, Dena Bank and ICICI Bank. Admitted fact is that these passbooks of bank accounts which are photocopies have not been exhibited.

7. In my opinion, it would be appropriate that the petitioner is given an opportunity to prove her bank accounts which have been stated by her in her affidavit by way of evidence. The defence of the petitioner is as noted above i.e. that she claims that the property was purchased by her husband and herself in the name of her husband. She should be entitled to place on

record evidence to support her defence.

8. In my opinion, there is material infirmity in the impugned order. Same is set aside. The petitioner is permitted to summon the concerned witnesses from Punjab and Sind Bank, Syndicate Bank, Dena Bank and ICICI Bank. The petitioner will ensure that dasti summons are served upon the concerned witnesses. The trial court may not grant any adjournment on the request of the petitioner while recording evidence of the said witnesses.

9. Petition stands disposed of. All pending applications, if any, also stand disposed of. In case there is any attempt to prolong the proceedings by any of the parties, the trial court may pass appropriate orders.

JAYANT NATH, J.

JANUARY 12, 2017

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