

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

% **Date of decision: 6th September, 2017.**

+ **CM(M) 974/2017**

MANJEET SINGH **Petitioner**

Through: Mohd. Azam Ansari, Adv.

Versus

SANT KAUR **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs No.32451/2017 & 32452/2017 (both for exemption)

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

CM(M) 974/2017 & CM No.32450/2017 (for stay)

3. This petition under Article 227 of the Constitution of India seeks a direction to the Additional District Judge (ADJ)-05 (West), Tis Hazari Courts, Delhi to, in Civ DJ/611263/2016 titled *Sant Kaur Vs. Manjeet Singh*, first decide the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner/ defendant, before compelling the counsel for the petitioner/ defendant to cross-examination PW1.

4. The application aforesaid under Order VII Rule 11 of CPC was filed on 17th August, 2017 when the suit was listed for cross-examination by the petitioner/defendant of PW1. Though the petitioner/defendant has not filed the order sheet of earlier date in the suit but from the tenor of the order dated

17th August, it appears that the PW1 was examined earlier and the date of 17th August, 2017 was fixed only for cross-examination of PW1.

5. The grievance of the petitioner/ defendant is that vide order dated 17th August, 2017, while two days' time was given to the respondent/plaintiff to file reply to the application aforesaid but it was clarified that the application will be heard only after cross-examination of PW1 and for which purpose the matter was adjourned to 18th August, 2017 already fixed. On 18th August, 2017 also, the counsel for the petitioner/ defendant took adjournment and the suit is listed next on 8th September, 2017 for cross-examination of PW1.

6. The counsel for the petitioner/defendant has referred to ***Amarjeet Singh @ Rinku Vs. Surjeet Singh*** 228 (2016) DLT 552 to contend that the application under Order VII Rule 11 of CPC has to be decided first.

7. The principle, that the application under Order VII Rule 11 of CPC is to be decided first has to be balanced with the principle that the witness present in the Court for deposition will not be returned unexamined, enshrined in Order XVII Rule 2 of the CPC and in Section 309 of the Criminal Procedure Code, 1973.

8. Supreme Court in ***State of U.P. Vs. Shambhu Nath Singh*** (2001) 4 SCC 667, in the context of Section 309 Cr.PC made it clear that if a witness is present in Court he must be examined on that day and that the Court must know that most of the witnesses could attend the Court only at heavy cost to them, after keeping aside their own vocation. It was further held that the primitive practice of making the witnesses wait and adjourning their examination to another day must be reformed by the presiding officers of the Trial Courts. Similarly in order dated 15th December, 2008 in CM(M)

No.1268/2008 titled “*Deepak Kumar Vs. Sushil Kumar*” and SLP(C) No.4619/2009 preferred whereagainst was dismissed *in limine*, this Court held that trial in the Court cannot be taken casually and summoning of a witness and sending them back unexamined is not to be looked upon kindly. It was held that once the Court gives a date for cross-examination of witness and witness appears in Court, they should not normally be sent unexamined and adjournment should only be under exceptional circumstances. Engagement of a new counsel or intention to move an application, in that case under Order VI Rule 17 CPC, were held to be not such exceptional circumstances and the order closing the right of cross-examination was upheld.

9. The petitioner/defendant in the present case did not file the application under Order VII Rule 11 of CPC at any earlier stage of the suit. On a reading of the application, the ground on which rejection is sought appears to be such which could have been taken immediately on receipt of summons (I may however clarify that the petitioner/defendant has not filed a copy of the plaint in the earlier suit filed by the respondent/plaintiff and on account of withdrawal whereof, the application aforesaid was filed and thus no opinion on merits can be expressed with respect to the application).

10. When a defendant files an application under Order VII Rule 11 of CPC at a strategic stage, to delay the suit and derail the proceedings listed for that date, he/she has to suffer the consequences thereof i.e., of the application, unless otherwise felt by the Court, being not permitted to derail the proceedings listed for that date.

11. No error is thus found in the procedure followed by the learned ADJ of deferring the decision on the application under Order VII Rule 11 of CPC to post cross-examination by the petitioner/defendant of PW1 and for which purpose the petitioner/defendant appears to have been taking repeated adjournments.

12. No case for interference in exercise of the jurisdiction under Article 227 of the Constitution of India, which cannot be used to assist a litigant to delay proceedings in the suit, is made out.

Dismissed.

No costs.

SEPTEMBER 06, 2017

‘bs’..

RAJIV SAHAI ENDLAW, J.

