

\$~5

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

+ CM(M) 1112/2017 & CM No. 36309/2017 (for stay)

SAROJ @ SWEETY Petitioner
Through: Mr.I.J.S.Mehra, Advocate with
Ms. Tabbassun Firdause, Advocates
Versus
RITU KAPILA Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **20.11.2017**

1. This order is in continuation of the earlier order dated 10th October, 2017.
2. The counsel for the petitioner has drawn attention to the order dated 9th August, 2017 in the suit when statement of PW-3 & 4 was recorded. The counsel for the petitioner also states that in the order dated 10th October, 2017 in this petition, PW-3 & 4 have been wrongly recorded as PW-2 & 3 and the application of the petitioner was for re-summoning of PW-3 & 4.
3. The counsel for the petitioner has also filed before this Court the examination-in-chief recorded of PW-3 & 4.
4. PW-3, Sh. Pranav Chaudhary, UDC, Office of the Sub-Registrar-IX, Kapashera, New Delhi, in his examination-in-chief stated having brought summoned record of the sale deed dated

CM(M) 1112/2017

Page 1 of 4

24th September, 2015 registered vide Registration No. 10489 in Book No.1, Volume No. 8460 on pages from 75 to 82 on 3rd October, 2015. The said witness has further deposed having seen the copy of the sale deed bearing Ex.PW-1/1 on the court record and the same being the true copy of the summoned record brought by him.

4. I have enquired from the counsel for the petitioner as to what cross-examination the petitioner wants to do of PW-3 and whether it is the case of the petitioner that Ex.PW-1/1 is not the correct copy of the registered document which was summoned.

5. Counsel for the petitioner states that he wants to cross-examine, whether the document was registered in his presence.

6. PW-3 has not deposed of the document brought by him having been registered in his presence or his being privy to the registration. Once he has not stated so, there is no need for the petitioner to put such question in cross-examination. While this order is being dictated, the counsel for the petitioner also states that since he was not present in the Court on 9th August, 2017, he did not see the summoned record and cannot say whether Ex.PW-1/1 is the correct copy of the document registered.

7. Counsel, on enquiry, also does not know whether the document on which endorsement of Ex.PW-1/1 has been made is a certified copy or uncertified copy of the registered document.

8. Counsel for the petitioner/defendant cannot through evidence make an enquiry. The registered sale deed is open for inspection to the

public at large and it is open to the petitioner/defendant to inspect the said document and/or to obtain certified copy thereof and merely for the purposes of inspection, which the petitioner/defendant ought to have done herself, the witness cannot be re-summoned.

9. The petitioner/defendant has thus not made out any case for re-summoning of PW-3.

10. As far as the PW-4 Ms. Kanta Rana, Notary Public is concerned, she, on 9th August, 2017 deposed about bringing the summoned record i.e. the Notary Register pertaining to agreement dated 15th December, 2015 and the parties having signed and put their thumb impressions on the register in her presence.

11. Qua PW-4, since she has deposed of parties having signed and put their thumb impressions in her presence, the petitioner/defendant is found to have a case for re-summoning for cross-examination and the reasoning given in the impugned order of PW-4 Kanta Rana also being a witness of record only is certainly erroneous.

12. Counsel for the petitioner/defendant, on enquiry, states that the evidence of the respondent/plaintiff is still under-way and the suit is listed next on 16th December, 2017.

13. Rather than issuing notice of this petition and which may lead to delays in disposal of the suit, this petition is disposed of by allowing the petitioner/defendant, subject to the petitioner/defendant paying costs of Rs.5,000/- to the counsel for the respondent/plaintiff on the next date of hearing, to re-summon PW-4 Kanta Rana for cross-examination, on such date as may be fixed in this regard.

14. However if the respondent/plaintiff is not agreeable for the acceptance of costs as aforesaid, the respondent/plaintiff shall indicate so before the suit court and will apply to this court for variation/modification/recall of this order.

15. With the aforesaid, the petition is disposed of.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2017

Mw..