

\$~37

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

Date of decision: 22nd November, 2019

+ **CM (M) 1656/2019**

GANGA RAM

..... Petitioner

Through: Mr. Abhay Kumar, Advocate.
(M:9716104763)

versus

SHEKHAR KUMAR

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

CM APPL. 50248/2019 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM APPL. 50249/2019 (delay in refiling)

2. For the reasons stated in the application, the delay in refiling the petition is condoned. Application is disposed of.

CM (M) 1656/2019 & CM APPL. 50247/2019 (stay)

3. There are two grievances in the present petition. The first grievance is in respect of order dated 27th August, 2019. Ld. counsel for the Petitioner-Defendant (*hereinafter the "Defendant"*), submits that the Respondent-Plaintiff (*hereinafter the "Plaintiff"*) had not filed any list of witnesses. After the cross-examination of PW-1 was concluded on 21st January 2019, the Plaintiff filed the evidence way of affidavit of PW-2 namely, Baldev Singh, only to fulfil the lacuna in the cross-examination of PW-1. He submits that under the provisions of Order XVI CPC, without filing of the

list of witnesses, such a procedure cannot be adopted.

4. The second grievance is in relation to de-exhibition of the documents, which have been exhibited as Ex.PW-1/2 (colly) namely agreement to sell, Will, SPA, Receipt, etc.

5. In respect of the first issue, there is no doubt that without filing of the list of witnesses, parties ought not to be permitted to commence the recording of evidence. Filing the list of witnesses is mandatory, as held by this Court in ***Zile Singh v. Santosh @ Santra & Ors. [CM (M) 1296/2018, decided on 6th November, 2019]***:

“14. Considering the manner in which evidence has been recorded in this matter, wherein a non-existent affidavit was sought to be exhibited, the following directions are issued to the trial courts:

i. Prior to listing a case for PE, the court shall ensure that the list of witnesses by all the parties is on record. The court would have the power to prune the list of witnesses so as to ensure that unnecessary burden is not put on the Registry in preparing summons and only those witnesses whose oral evidence is necessary shall be summoned;

ii. Prior to recording the examination in chief, the judicial file shall be seen to confirm that the affidavit in evidence is on record. All the documents which the witness seeks to exhibit shall be examined and either exhibited or marked. Only thereafter the cross examination would commence.

iii. If the witness is a summoned witness and no affidavit in evidence is filed, then the examination in chief shall be recorded, the documents (either in original or copy) shall be exhibited or marked

and thereafter cross examination would commence. The order for the day would reflect if originals, certified copies or if copies are being exhibited/marked – whether originals were seen and returned. On the copy the remark OSR shall be given with the signature of the Presiding officer.

iv. If any documents are confronted during cross examination, the above procedure would be followed in respect of the said documents as well.

15. Copy of this order be circulated to all the District Judges for onward transmission to all the Presiding officers, by the worthy Registrar General of this Court.”

6. However, it is noticed that the general practice that has been followed in the Trial Courts is to permit the commencement of evidence without insisting for lists of witnesses being filed by the parties. However, such a practice is contrary to law and is required to be stopped with immediate effect.

7. In the present case, however, since PW-2 is claimed to be a witness to various documents, which are relied upon by the Plaintiff and the Plaintiff has also filed the evidence of PW-2, a copy of which has been served, PW-2 is being permitted to lead his evidence. The Defendant would be entitled to cross-examine the PW-2. However, it is made clear that no further evidence shall be permitted on behalf of the Plaintiff.

8. Insofar as the second issue, in relation to de-exhibition of documents, is concerned, it is the settled position in law that mere exhibition of documents would not mean that the same would be read in evidence without having examined if the same have been proved in accordance with law. If

the Defendant has any objections in respect of mode of proof, admissibility or other objections in respect of these documents, prior to commencement of cross-examination, the said objections would be raised and recorded by the Trial Court. After recording the objections of the Defendant, the cross-examination shall commence. The objections shall be dealt with and adjudicated at the time of final hearing. It is made clear that mere exhibition of these documents, shall not mean that the Trial Court has deemed them to have been proved in accordance with law or that the same have to be read in evidence.

9. With these observations, the petition and all pending applications are disposed of.

Dasti.

NOVEMBER 22, 2019/dk

**PRATHIBA M. SINGH
JUDGE**