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

Date of decision: 7th November, 2019

\+ **CM (M) 1589/2019**

JASBIR KAUR SOHAL ..... Petitioner

Through: Mr. Vijay Joshi and Mr. Himanshu Pathak, Advocates with petitioner in person. (M: 9873677817)

versus

FLT LT GURCHARAN SINGH SOHAL (RETD) & ORS ..... Respondents

Through: Mr. Om Prakash and Mr. R. R. Pathak Advocate for R-1. (M: 9810794902)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

CAV 1103/2019

1. Caveat is discharged as Caveator has entered appearance.

CM APPL. 48108/2019 (exemption)

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

CM (M) 1589/2019 & CM APPLs. 48109/2019, 48131/2019

3. The present petition has been filed challenging the order dated 9th October, 2019 passed by the ld. Trial Court by which the ld. Trial Court has closed the Petitioner's/Defendant No.1's *(hereinafter, "Defendant No.1")* evidence and has refused the prayer to reopen her evidence. The operative portion of the impugned order reads as under:

> *"9. Perusal of the order sheets reveals that on various occasions defendant has been accommodated by the*

court on her request for adjournment and on two occasions even cost of Rs 10,000/- was imposed. Till date defendant has not filed list of witnesses which is required to be filed after the framing of issues. RE was closed on 06.12.2017 and defendant has availed various opportunities in the last two years to conclude evidence but it was only after case was fixed for final arguments she realized that she needs to examine more witness. This case pertains to 2004 and after a long journey of 15 years this case has reached at the stage of final arguments. The various judgements relied upon by the defendant/applicant are not applicable to the facts of the present case. The previous counsel of the defendant who has contested for defendant for the last so many years, cannot be allowed to be blamed as negligent and not conducting her case in a proper manner. As observed by Hon'ble High Court in ***Aditya Chatterjee Versus Sudershan Chatterjee,*** *the party is not allowed to reopen and bridge the perceived gaps in her evidence after cross examination is concluded.*

10. In view of aforesaid reasons, I find no merit in this application and same is accordingly dismissed."

4. Ld. counsel for Defendant No.1 submits that Defendant No.1 is the wife of the Plaintiff/Respondent No.1 *(hereinafter, "Plaintiff")* and is running a Boutique from the shop premises bearing No.22, Archna Shopping-Complex, Greater Kailash, Part-I, New Delhi-110048 *(hereinafter, "shop premises")*, of which possession is being sought by the Plaintiff.

5. The marriage between the parties already stands dissolved by a decree of divorce passed on 3rd May, 2018. Ld. counsel for Defendant No.1 submits that the said decree has been challenged by his client. It is further submitted that due to the negligence of the counsel who was earlier appearing in the matter, certain documents, relating to the business which was being

conducted by Defendant No.1 under the name M/s JassKaurInc., could not be placed on record. On 23rd July, 2019 the evidence was closed and an application was moved under Order XLVII Rule 1 CPC read with Sections 114 & 151 CPC seeking recall of the said order. The said review application was dismissed. Ld. Counsel for Defendant No.1 submits that Defendant No.1 would be irreparably prejudiced if she is not allowed to prove the documents relating to her business which is being conducted from the shop premises. He relies on the following judgments: ***Salem Advocate Bar Association, Tamil Nadu v. UOI [W.P.(C) No. 496/2002, decided on 2nd August, 2005 by the Supreme Court]*** and ***Rano Devi and Ors. v. Ram Lal [OWP No. 1603/2018, decided on 28th September, 2018 by the Jammu and Kashmir High Court]***. He accordingly prays that one opportunity may be given to Defendant No.1 to prove the documents which are already on record and marked A to E.

6. On the other hand, ld. counsel for the Plaintiff submits that the suit is quite old and Defendant No.1 has already admitted that the Plaintiff is the owner of the shop premises. Repeated opportunities were given by the ld. Trial Court to Defendant No.1 for leading evidence. In fact, on 12th January, 2008 the Petitioner sought liberty to examine only one witness, which was permitted by the Court and even that evidence was lead only after three adjournments and costs being imposed. On 17th October, 2019, final arguments have commenced in the matter and the matter is part-heard. It is submitted that the entire intention of Defendant No.1 has been to delay the proceedings in the suit and hence, no indulgence should be shown to Defendant No.1. He relies on the following judgments:

i. ***P.S.S. Agro & Investment Pvt. Ltd. v. Papita Devi & Ors. [CM***

(M) 1038/2017, decided on 18th September, 2017 by the Delhi High Court]

ii. ***Madan Gopal Singh v. Mahinder Kaur & Ors. [CM(M) 979/2017, decided on 8th September, 2017 by the Delhi High Court]***

iii. ***Harsh Mani Mohindra v. Sanjay Verma [CM (M) 923/2019, decided on 25th September, 2019 by the Delhi High Court]***

iv. ***Shiv Cotex v. Tirgun Auto Plast P. Ltd. and Ors., MANU/SC/0991/2011.***

7. This Court has heard the ld. counsels for the parties and has also perused the record. The suit was filed by the Plaintiff in 2004 and is more than 15 years old. The suit is for possession and injunction. Admittedly, Defendant No.1 is not paying any amount for occupying the shop premises. A perusal of the order sheets placed on record shows that repeated adjournments have been sought by Defendant No.1. This is clear from a perusal of order dated 6th December, 2017, on which date evidence of Defendant No.1 was closed and it was directed as under:

> *"PW13 Sh. Sharad Jain recalled for further examination. He has filed documents as directed on the last date of hearing except certificate u/s 65B of the Indian Evidence Act. Copy be supplied to both the parties on the next date. Witness is examined, cross-examined. Diet money of Rs.300/- paid as directed.*
>
> *Witness is directed to file proper affidavit u/s 65B of the Indian Evidence Act. Concerned legal advisor in the concerned bank is directed to ensure that proper affidavit is filed on or before next date with two copies for the parties, failing which branch manager as well as legal officer shall be liable for contempt*

proceedings.

Plaintiff evidence stands closed subject to filing of affidavit u/s 65B of the Indian Evidence Act.

Defendant counsel has submitted that he needs three weeks' time to prepare affidavit as he is out of station. Head. Allowed.

Affidavit be filed positively in the first week of January with copy to the opposite party/counsel through registered post/dasti/email.

Now to come up for filing of affidavit u/s 65B of the Indian Evidence Act / DE on 12.01.2018. DW1 to remain present on the next date. Date is given on the joint request of the parties."

8. Thereafter, on 12th January, 2018 one last opportunity was granted to Defendant No.1 to lead evidence. The said order reads as under:

"*In terms of order dated 06.12.2017, Sh. Sharad Jain has appeared from ICICI Bank and filed certificate u/s 65B of the Indian Evidence Act and marked it as Ex.DW13/X. Copy has been supplied.*

It is submitted by Ld. Counsel for the defendants that evidentiary affidavit could not be prepared as there was bereavement in the family of the defendant and further wife of the CA of the defendant no.1 also expired on account of which the affidavit could not be prepared and documents which were to be tendered could not be filed. She has sought two weeks time to do the needful. Affidavits of all defence witnesses to be examined through affidavit be filed on or before next date with one week advance copy to the opposite party/counsel through by hand/email against acknowledgment. Adjournment has been opposed.

At this stage, counsel for defendants has stated at bar that only one witness is to be examined i.e. defendant no.1 herself. In the larger interest of justice, one last opportunity granted to defendants to lead evidence.

Matter now be listed for defence evidence on

> *17.02.2018 and 20.02.2018. Date given with convenient of counsels. It is made clear to the parties that the defence shall be concluded in the month of February and no further adjournment shall be granted for completion of defence evidence being 10 year old case.*"

9. On 20th February, 2018 adjournment was again sought, which was granted, subject to costs of Rs.10,000/-. On 17th October, 2019, final arguments in the matter have commenced.

10. Detailed evidence has been recorded by the ld. Trial Court, on behalf of both parties. DW-1 has appeared and has been cross-examined. The documents which Defendant No.1 wishes to rely upon at this stage are as under:

> *"a. Copy of Assessment order of M/s Defendants jasskaur Inc. for the year 2003-04 Mark A*
> *b. Copy of Balance Sheet and Profit and Loss Account of M/s Jasskaru Inc. for the year 01.04.2000- 31.03.2001 Mark B*
> *c. Copy of balance sheet and profit and loss account of M/s Jasskaur Inc. for the year 01.04.2001- 31.03.2002 Mark C.*
> *d. Copy of balance sheet and profit and loss account of M/s Jasskur Inc. for the year 01.04.2003 -31.03.2004 Mark D.*
> *e. Copy of statement of account of Bank of Rajasthan Ltd. for the period of 01.06.2004 to 30.09.2004 of M/s Jasskaur Inc. Mark A."*

11. A perusal of the above documents shows that they are assessment orders, balance sheets, profit and loss accounts and bank accounts for various years, ranging from 2000 to 2004. All these documents were in the power and possession of Defendant No.1 right from the inception of the suit. These relate to the years 2000-2004 and a copy of the same were available with Defendant No.1 since the suit was instituted. The same ought to have been filed at the relevant time. Even if the allegation of Defendant No.1 that

these documents were with the Plaintiff and hence, the originals were not available, is accepted, certified copies of these documents could have been obtained from the Income Tax Department and the Bank. In such matters, when certified copies of documents can be obtained, there is no need for civil proceedings to be unnecessarily delayed by summoning witnesses from these Departments. Copies of these documents are already on record marked as A to E. The documents were, in fact, marked for identification when DW-1 had appeared. Thus, copies of the documents having been available with Defendant No.1 right from the inception of the suit, the application seeking review is not liable to be entertained inasmuch as there is no error in the order of the ld. Trial Court closing Defendant No.1's evidence.

12. The suit being of 2004 vintage, even though amendments may have been carried out in the plaint, the suit has to be disposed of at some stage. Defendant No.1 has had the opportunity of giving her complete evidence in the matter and has also subjected herself to cross-examination. The documents sought to be brought on record, being documents available with Governmental Authorities, ought to have been placed on record at the appropriate stage. Merely blaming the earlier counsel is not sufficient. Further, the order sheet also shows that Defendant No.1 always wanted to lead her own evidence and it is only after her evidence has concluded that an application is being moved for permission to lead further evidence. The record of this case does not show any requirement to give permission to lead further evidence. Moreover, in the judgment dated 3rd May, 2018 which has been relied upon by the Plaintiff, by which the decree of divorce was granted, the Court has observed that Defendant No.1 admitted that the Plaintiff is the owner of the shop premises. No use and occupation charges

are also being given by Defendant No.1 to the Plaintiff. The relevant portion of the Court's observations is as follows:

> *"41. From the tone and tenor of the pleadings and the evidence led by the respondent wife on the record, it is quite discernible that though the petitioner husband was economically strong, the respondent wife belonged to a much wealthy and resourceful family. This class difference permeates throughout the length and breadth of their marital life. The greed of the respondent wife for a share in the wealth or the property of the petitioner husband is also exemplified from the fact that she dragged the petitioner husband to file a suit for possession in respect of Shop No.22 Archna Arcade, although admitting that he was the legal owner thereof and that she had been paying rent, yet taking claim of adverse possession so as to aggravate his pain and miseries."*

13. In the facts and circumstances of this case, no interference is called for. The ld. Trial Court shall proceed with the final hearing of the matter. The copies of documents placed on record shall be considered at the time of final adjudication, if permissible in law. Two weeks' time is granted to Defendant No.1 to file certified copies of the documents, as requested. If the same are filed by this time, the same shall be considered in accordance with law.

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

PRATHIBA M. SINGH
JUDGE

NOVEMBER 07, 2019/*dj*