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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th November, 2019

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CM(M) 1644/2019 and CM APPL. 49836/2019, 49837/2019

NITIKA GUPTA

..... Petitioner

Through: Mr. Chandra Shekhar Goswami,
Advocate (M: 7838330149).

versus

SUDHA GUPTA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner (Respondent before the Trial Court) challenges the impugned order dated 18th October, 2019 by which the right of the cross examination of PW3 has been closed. The said order reads as under:-

“Ld. Proxy counsel appearing on behalf of respondent submits that respondent is in JC, however, no details has been provided qua the case under which respondent is in JC. It is further submitted that main counsel is stated to be busy in attending some matter in Hon'ble High Court of Patna, so he is ready to cross-examine PW-3.

I have heard the submissions made and after perusal of the record, it reveals that today was the last and final opportunity granted to the respondent for cross-examining PW-3, however, neither the cost has been paid nor the main counsel is present for cross-examining the PW-3. The proxy counsel appearing, today has not been authorized by the main counsel or the respondent himself to cross-examine the witness PW-3, so he cannot be allowed to cross-examine the

witness. Today being the last and final opportunity granted to the respondent for cross-examining the petitioner's witness and the matter pertains to senior citizen, no further adjournment can be granted for the said purpose. Accordingly, opportunity stands closed.

Ld. Counsel for petitioner submits that no other witness is require to be examined, PE stands closed accordingly.

Put up for RE on 16.11.2019. Copy of evidence by way of affidavit on behalf of respondent be filed with copy in advance supplied to the other side 10 days prior to NDOH."

2. A perusal of the same shows that the ld. ACJ did not permit the junior counsel appearing from the chambers of the filing counsel to cross examine the witness - PW3 on the ground that he was not authorised. This would be contrary to the recent judgement of this Court in ***Veena Gupta versus Bajaj Allianz Life Insurance Co. Limited, CM(M) 1555/2019 Decided on 30th October, 2019***, wherein it has been clearly held that if junior counsels are ready to cross-examine the witnesses and to argue the matter, so long as they are from the same filing counsel's office they ought to be permitted to appear and to conduct the proceedings. The relevant portion of the said judgement reads as under:-

"6. Further, it is noticed that in the District Courts, junior counsels, who appear from the chambers of the counsels who file vakalatnamas, are reflected as "Proxy Counsel". From this, it is not clear as to whether the junior counsels, who appear, are ready to assist the Court or not. The term "Proxy Counsel" ought to be used only when the counsels, who appear, are not able to assist the Court in the matter or are merely seeking an adjournment. Junior counsels, who work in the filing counsel's chamber, and are aware of the facts and assist the court, ought

not to be described as proxy counsels. In the practice of law, courts have a duty to encourage junior counsels who may not have filed vakalatnamas and ought to hear them if they are ready to assist the court. They cannot be simply treated as proxy counsels, as such a treatment, is not only discouraging to such junior advocates but also creates delays in the dispensation of justice. When junior counsels appearing before the court are prepared and are ready to assist, they ought to be heard and effective orders can be passed. Filing counsel or the counsel in whose favour the client has given the vakalatnama ought to encourage junior advocates and counsels to make submissions and argue matters. Of course, there is a word of caution. There are some orders such as withdrawal of a suit, recordal of settlement in a suit, etc., which essentially require the filing counsel to be present. Except in such situations, court proceedings can continue with the appearance of junior counsels so long as they have the necessary express/implied permission to make submissions from their seniors. When junior counsels working in the chambers of filing counsels appear and assist the court, instead of describing them as 'proxy counsels' alternative terminology such as “____, Advocate appearing for Id. Counsel for the Plaintiff/Defendant” can be adopted. Only in case a junior or other counsel who is completely unrelated and/or unprepared in the case, the terminology of 'proxy counsel' can to be used. This would also enable junior counsels to ensure that they are not merely taking passovers and adjournments but also get prepared in the matters and are ready to make submissions.”

3. The impugned order clearly records that Shri. Goswami, Id. counsel who appeared on the said date before the Id. ACJ was ready to cross examine PW-3. If that was the position, there is no reason why the Id. ACJ

should not have allowed the said junior counsel to cross examine the witness. Accordingly, the impugned order, is set aside to the extent it did not permit cross examination. The cross-examination of PW3 shall now be conducted on the next date before the Id. Trial Court prior to commencing the RE. Today's order to be communicated to the Id. ACJ's Court, so that the counsel for the Respondent (Petitioner before the Trial Court) is duly informed in order to ensure that PW3 is present on the next date for cross examination. List for directions before the Id. ACJ on 3rd December, 2019.

4. The petition with all pending applications is disposed of. Registry to communicate this order to the Court of the ACJ (West), Tis Hazari Courts, Delhi hearing *Sudha Gupta v State*, SC No. 103/2016.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 19, 2019
MR