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

+ **CM (M) 126/2019 & CM APPL. 3676/2019**

+ **CM (M) 129/2019 & CM APPL. 3731/2019**

RAJ KUMAR SHARMA

..... Petitioner

Through: Mr. Sanjeev Sahay, Advocate.
(M:9810199210)

versus

KANCHAN MAKAN

..... Respondent

Through: Mr. Joginder Sukhija and Mr. Satuik
Bajaj, Advocates. (M:9810315334)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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16.12.2019

1. The Petitioner/Defendant (*hereinafter*, "*Defendant*") is aggrieved by the impugned orders dated 10th May, 2018 and 18th December, 2018, which, in effect, have closed the Defendant's right to cross-examine the Respondent's/Plaintiff's (*hereinafter*, "*Plaintiff*") witness and have also closed the Defendant's right to lead evidence in the matter.
2. The present petitions arise out of a suit filed by the Plaintiff - Smt. Kanchan Makan against the Defendant – Shri Raj Kumar Sharma, seeking permanent injunction, possession, recovery of damages and *pendente lite* and future interest, in respect of the rear portion of the first floor of property bearing No.C-41, Gulmohar Park, New Delhi-110016 (*hereinafter*, "*suit property*").
3. The suit was initially filed before this Court but was transferred to the District Court on 16th December, 2015, owing to the increase in pecuniary

jurisdiction. Thereafter, on two occasions i.e., 5th December, 2016 and 27th September, 2017, the ld. Trial Court imposed costs on the Defendant for not cross-examining the Plaintiff's witness and for seeking an adjournment. Thereafter, the Presiding Officer was on leave on four occasions, however, on 10th May, 2018 the Defendant's counsel missed the matter and the right of the Defendant to cross-examine the Plaintiff was closed. On 14th August, 2018, the Defendant's right to lead evidence was closed and on 18th December, 2018, the Defendant's application for recalling of PW6 was dismissed. The orders dated 10th May, 2018 and 18th December, 2018, have been challenged before this Court.

4. The submission of the ld. counsel for the Defendant is that except on the two occasions mentioned above, the Defendant has been regularly appearing in the matter and that even on 10th May, 2018 there was a valid ground for non-appearance as the brother of the Defendant was having some medical issues. The Defendant then moved an application seeking recall of the above orders and a right for cross-examination, which was rejected by the ld. ADJ on 18th December, 2018. Ld. counsel for the Defendant further submits that the Defendant may be put to terms, inasmuch the case of the Defendant in the written statement is that the Plaintiff has no right in the suit property and the same deserves to be adjudicated on merits.

5. On the other hand, ld. counsel for the Plaintiff submits that the Defendant has not paid any amount for occupying the suit property for almost 10 years. The matter is adjourned from time to time as the Defendant's intention is only to delay the adjudication of the suit. It is further submitted that the medical record does not justify the reasons for non-appearance on 10th May, 2018.

6. Without going into the question as to whether there was a valid justification for non-appearance or not, the overall fact that emerges is that the Defendant has been in possession of the suit property since 2010 at least. The suit has been pending since 2010. The Defendant claims that the Plaintiff is the sister-in-law (*bhabhi*) of the original owner and has no rights in the suit property. It is his further case that he had entered into a transaction for purchase of the property. However, the case of the Plaintiff is that she is the registered owner of the suit property.

7. Be that as it may, there is no doubt that the Plaintiff's family, as admitted by the Defendant, was the owner of the suit property. The Defendant has to establish his case of having been handed over the suit property for occupation by the brother in law of the Plaintiff, as is pleaded in the written statement. Presently, the Defendant is not paying any amount for occupying a valuable South Delhi property.

8. In view of the above facts, the Defendant is being permitted to defend the suit, including recalling of the Plaintiff's witness for cross-examination, and leading evidence, on the following terms:

- a) The Defendant shall deposit before the Id. Trial Court a sum of Rs.20,000/- per month, to be paid on or before the 10th of every month. The said payment shall commence from 10th January, 2020.
- b) Permission for recalling the Plaintiff is granted, subject to the aforementioned deposit being commenced, for cross-examination by the Defendant. The Plaintiff's witness's cross-examination shall be conducted on two dates in two sessions. No further opportunity shall be granted to the Defendant. The Defendant does not wish to cross examine any other witnesses of the Plaintiff.

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- c) After conclusion of the cross-examination of the Plaintiff witness, the Defendant shall lead his evidence, as per the list of witnesses already on record.
 - d) The Defendant shall not be granted any undue adjournment(s) in the matter. Heavy costs would be imposed if delays are caused by the Defendant.
 - e) Considering the fact that the suit has been pending since 2010, the Id. Trial Court shall adjudicate upon and dispose of the suit, on or before 31st August, 2020.
9. The petition and all pending applications are disposed of in the above terms.


PRATHIBA M. SINGH, J.

DECEMBER 16, 2019/dk