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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 184/2019 & CM APPL. 4852/2019
SUSHMA BABBAR & ANR Petitioner
Through Mr. Sanjay Mani Tripathi, Adv.

versus

NEETA SHARMA Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **05.02.2019**

None is present on behalf of the respondent who is indicated to have been served in terms of the order dated 01.02.2019 through her son.

To come up at 12.30 P.M.

ANU MALHOTRA, J

FEBRUARY 05, 2019/NC

12.30 p.m.

Present : Mr. Sanjay Mani Tripathi, Adv. for petitioner
Counsel for the respondent (appearance not given)

Vide the present petition, the petitioner assails the impugned order dated 04.01.2019 of the learned Trial Court vide which an application under Order XVIII Rule 17 of the CPC of the petitioner seeking recalling of the order dated 14.11.2018 was declined.

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Vide order dated 14.11.2018 of the learned Trial Court in Case No. 8047/16 pending before the learned JSCC/ASCJ/GJ (Shahdara), KKD, Delhi, a witness PW-1 is indicated to have been present, the defendant no. 2 i.e. the present petitioner indicated to have been present on which date it was stated by the defendant no. 2 that he will cross-examine the witness himself. The order dated 14.11.2018 of the learned Trial Court reflects that the defendant was asked whether he was from a legal background and whether he has consulted his advocate with regard to the decision to cross-examine the witness and that the defendant has stated that he is not from the legal background but her has consulted with his advocate and therefore the witness on his behalf as well as on behalf of the defendant no. 1 being her attorney has cross examined the PW1 and thus PW1 was cross examined and discharged and that the counsel for the defendant had closed that P.E. with the matter having been renotified for D.E. for 04.01.2019.

Vide order dated 04.01.2019 which is also one of the impugned orders, the prayer seeking the permission to cross-examine PW-1 afresh was declined.

In view of the proceedings dated 14.11.2018 also *inter alia* observing to the effect that the examination of the PW-1 on the date 14.11.2018 by the defendant no. 2 himself had been conducted at length and ran into five pages and that the application was silent qua the aspect on which PW-1 was not cross-examined and the defendant no. 2 on 04.01.2019 had orally stated that he wanted to confront PW-1 with certain documents and he wanted to cross-examine him qua the site plan. Vide the impugned order it was held that

there was no merit in the application and that the counsel for the defendant was not even present on 04.01.2019 for cross-examination.

On behalf of the respondent the prayer has been opposed on a perusal of the testimony of the witness PW-1 who was initially examined on 23.02.2017 which indicates that the cross-examination was partly conducted on behalf of the defendant i.e. the petitioner herein on 23.02.2017 on which date the testimony had been deferred for production of documents by the PW-1. On the date 14.11.2018 when the witness PW-1 was recalled for further cross-examination, the defendant no. 2 i.e. the present petitioner chose to cross-examine the said witness on his own for self and as an attorney of the defendant no.1 on which date he is indicated to have cross-examined the witness at length. However it cannot be overlooked that in the testimony of 14.11.2018, there is a question to the effect : -

“Ques: Do you have attorney from the plaintiff for giving evidence? (objected to). Question is disallowed being irrelevant.

Note: the defendant was explained on several occasions that he should ask relevant questions. Now he is cautioned not to ask irrelevant question.

At this stage, defendant has requested that cross-examination may be deferred. Request is opposed.

Request is declined as there is no reason for deferring further cross-examination.

It is wrong to suggest that there is no averment in the title documents of plaintiff that the walls of the said property on the three sides i.e. eastern side, north and southern side are owned by plaintiff. It is correct that plaintiff had purchased the suit property from Sh. Moolchand. I do not know whether Sh. Moolchand is alive or not.

The defendant has requested for adjourning the matter stating that his counsel is not available. It is opposed.

Before the start of cross-examination, defendant was specifically asked whether he belongs to legal profession and whether he had consulted his advocate for cross-examining the witness and at that stage, he had stated that he is not from legal profession but he has consulted the advocate and will cross-examine the witness. Thus, the defendant cannot seek deferring of cross-examination according to his choice. Therefore, request is declined.

The defendant has requested for passover for few minutes. Allowed. As requested, be put up at 12.30 PM.

*Case No. 8047/16
Neeta Sharma Vs. Sushma Babbar*

At 12.40 PM

PW-1 Statement of Sh. Sunil Sharma (Recalled for further cross-examination)

On SA

XXXXX by Sh. Sandeep Saraswat, defendant no. 2.

At this stage, defendant has put the photographs bearing serial no.17,18 of Ex. PW1/16 to the witness and asked the following question:

Ques. Is it correct that in the said photographs the marks of removal of almirah by defendants from the wall are visible?

Ans. No. it is incorrect. It is not of any almirah.

Ques. Is it correct that there is remark of removal of tubelight in the said photograph?

Ans. I do not know.

It is correct that there is an almirah in the same wall which opens property of the plaintiff.

At this stage, defendant has once again requested for adjournment. It is opposed. The request is declined.

No further question has been asked.”

It is apparent that though undoubtedly the defendant no. 2 had been asked by the learned Trial Court at the outset whether he belongs to legal profession and whether he had consulted his advocate for cross-examining the witness and at that stage, he had stated that he is not from legal profession but he had consulted the advocate and would cross-examine the witness himself, nevertheless, the defendant i.e. the petitioner herein during the course of the testimony on 14.11.2018 when he was cautioned by the learned Trial Court not to ask irrelevant questions, the defendant, i.e., the petitioner herein had requested that the cross-examination may be deferred,

which request was opposed and the request was declined with it having been observed that there is no reason for deferring further cross-examination. The further testimony of 14.11.2018 reflected hereinabove indicates that after further questions, the defendant once again had requested for adjournment stating that the counsel was not available, which was opposed and the request was declined and that thereafter the defendant had sought for a Passover for few minutes, which was allowed with the matter having been put up at 12.30 p.m. and that the matter was taken up again, the defendant no. 2 further cross-examined PW-1 and during the course of the cross-examination, the defendant once again requested for adjournment, which was opposed and the request was declined whereafter the P.E. had been closed.

Apparently the defendant i.e. the petitioner herein through the course of the proceedings on 14.11.2018 during the cross-examination when he was cautioned by the learned Trial Court not to ask irrelevant questions had sought time for assistance of his counsel. In these circumstances, it is considered appropriate in the interest of justice to grant one single opportunity to the defendant for cross-examination of PW-1 subject to the payment of costs of Rs.20,000/- by the petitioner to the plaintiff on the date to be fixed by the learned Trial Court.

ANU MALHOTRA, J

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