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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 5th December, 2019

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CM(M) 1202/2019

LAXMI DEVI

..... Petitioner

Through: Ms. Sonali Malhotra, Advocate (M:
9818024129).

versus

SURESH MENDIRATTA

..... Respondent

Through: Mr. Anuj Gupta and Mr. Pinki
Aggarwal, Advocates along with
Respondent in person.
(M:9999936866)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

REVIEW PET. 473/2019 & CM APPL. 49623/2019

1. Ld. Counsel for the Respondent submits that there is no challenge filed by his client against the earlier orders passed by this Court on 30th October, 2019 and 5th August, 2019.
2. The present review petition seeks a review of order dated 30th October, 2019, by which this Court, after hearing the ld. counsels for the parties had directed that the DNA test would be required, to establish as to whether Mr. Suresh Mendiratta @Suresh Chander Mendiratta is the son of Smt. Laxmi Devi or Smt. Geeta Devi. On the said date, the Court had also fixed the date and time for giving of the samples which was modified by subsequent orders.
3. The primary ground on which the review petition is based is that the as per the Respondent the said two ladies i.e, Smt. Laxmi Devi and Smt.

Geeta Devi were not merely sisters but were twin sisters who were married to twin brothers i.e. Mr. Locha Ram and Mr. Khem Chand respectively. Accordingly, the stand taken by the Respondent is that an advanced DNA test to analyse the entire genome sequence would be required to establish as to whether the Petitioner is the biological son of Smt. Geeta Devi or Smt. Laxmi Devi. Thus, review is sought on the nature of the DNA test that is to be conducted in this matter.

4. Mr. Gupta, Id. counsel appearing for the review applicant – Respondent in the petition submits that the position on record is that these two ladies were twin sisters and in the case of twin sisters, the usual DNA test would not be effective, if the advanced DNA test is not be conducted and a simple DNA test as has been directed by the Court, would not serve the purpose especially because the three persons i.e., Smt. Geeta Devi, Mr. Locha Ram and Mr. Khem Chand are no more. It is urged that all along in the documents it was admitted that the Respondent was the son of Mr. Khem Chand and Smt. Geeta Devi. Thus, a DNA test is actually not required.

5. On the other hand, the Petitioner represented by Ms. Sonali Malhotra, Id. counsel submits that the review petition is completely unfounded inasmuch as it has never been the case of the Respondent that the two sisters are twin sisters. She submits that in the written statement the stand was that the Petitioner - Smt. Laxmi Devi is the younger sister of Smt. Geeta Devi. She submits that considering the age of Smt. Laxmi Devi the DNA test ought to be conducted on an early date and no further delay should be permitted in this matter. The entire purpose of filing the review application is only to delay in order to ensure that the DNA test does not take place.

6. Vide order dated 30th October, 2019 this Court has heard the Id.

counsels for the parties in detail. Vide the said order, the Court has already noted that the Respondent- Mr. Suresh Mendiratta had given consent on 29th July, 2016 for conduct of the DNA test. The said order dated 29th July 2016 reads as under:

“An application for DNA test of defendant as moved by plaintiff u/s 151 CPC dated 12.2.15 is pending on record. Defendant has submitted that he has no objection to undergo the DNA test to prove his parentage. Statement of defendant recorded to that effect separately. In view of the same, application in hand stands allowed. Let DNA test of defendant be conducted from AIIMS. The mother as well as defendant will appear before the concerned authorities on 23.8.16 and be put up before this court for report on 29.9.16. Copy of this order be given Dasti to both the parties for compliance.

Statement of Suresh Mendiratta defendant

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I am defendant in the present matter and I state that I am ready to undergo DNA test and have no objection to the same to prove my parentage. I have no objection if the application u/s 151 CPC moved by plaintiff dated 12.2.15 is allowed.”

Despite more than three and a half years having passed, after giving consent for a DNA test, the Respondent has continued to delay the same by moving one application or the other. Finally, on 30th October, 2019 the directions were issued for submission of samples for the DNA test and despite the said order, till date, the samples have not been collected. The review petition has now been filed claiming, on the basis of some internet research, that Mr. Laxmi Devi and Smt. Geeta Devi being twin sisters, an advanced DNA test is required. Firstly, it is clear from the written statement which is on record

that the stand of the Respondent himself was that the Petitioner – Mr. Laxmi Devi was the younger sister of Smt. Geeta Devi. The relevant extract from the written statement is set out below:

“2. Para 2 is wrong and hence denied except that the plaintiff is the younger sister of defendant's mother, Smt. Geeta Devi. It is submitted that the defendant's mother, Smt. Geeta Devi expired intestate. The alleged will dated 08.02.2008 is a fabricated document bearing forged signatures of defendant's mother, Smt. Geeta Devi.”

7. This fact is also borne out in various other documents and pleadings and thus, for the Respondent to argue today that they are twins is completely contrary to the record. Further, the reliance placed on an internet printout to say that an advanced DNA test would be required in these circumstances, also seems to be far-fetched inasmuch as it was never the case of the Respondent that they are twins.

8. Further the reply to the review petition also consists of various documents including the voter ID card and the voter list of Smt. Laxmi Devi and Smt. Geeta Devi which shows that they are not twins and they are at least two to three years apart in terms of age. For example, the document placed at page 253, shows that Smt. Geeta Devi was 70 years of age in 1996, which would mean that as on date, if Smt. Geeta Devi was alive, her age would be approximately 93 years of age. Further, insofar as Smt. Laxmi Devi is concerned, she was shown to be 60 years old in 1988 from a document placed at page 251. Thus, the age of Smt. Laxmi Devi would be around 90-91 years old. Thus, from the documents placed on record it is clear that there is difference in the age gap between these two ladies and the claim that they are twins is not liable to be entertained especially in a review

petition.

9. The petition is accordingly dismissed with Rs.10,000/- costs on the Respondents. It is now directed that the Respondent and the Petitioner shall submit the samples which would now be collected in Safdarjung Hospital, New Delhi, by the Chief Medical Officer. The Petitioner has moved an application for appointment of a Local Commissioner which would not be required in the circumstances inasmuch as the Chief Medical Officer can depute any other official from Safdarjung Hospital for submitting the samples to the CSFL after collecting the same at Safdarjung Hospital.

10. Dr. Rajesh, Medical Officer has given a note to the following effect:

“As per instructions from Dr. Naresh Bhardwaj (HOD Casualty) and Surender K. Goyal (I/C Casualty). Honourable Court advised to kindly depute an Investigating Officer/ any authorized person from the Court to receive blood samples in sealed cartons from Safdarjung Hospital & fresh date for sample collection may be given.”

11. At this point, the Court does not deem it either necessary or appropriate to appoint any officer from the Court to collect blood samples. The Medical Officer will himself collect the blood samples and depute any other responsible person for submission of the same to CFSL, for the purpose of DNA testing. The costs of Rs.10,000/- shall be paid to the Petitioner within a period of two weeks. The date of collection of samples is fixed on 16th December, 2019 at

2:30 p.m.

12. With these observations the review petition and all pending applications are disposed of. *Dasti*.

PRATHIBA M. SINGH
JUDGE

DECEMBER 05, 2019

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