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

Date of decision: 23rd October, 2019

+ **CM (M) 1412/2019 & CM APPL. 42722-23/2019**

CHANDER PRATAP SINGH

..... Petitioner

Through: Mr. Gaurav Sarin, Mr. S. K. Rout,
Mr. Harish Kumar and Mr. Aman
Mehrotra, Advocates.
(M:9971754754)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for R-1. (M:9811394417)
Ms. Shamaa Sharma, Advocate for R-
2/DMRC with Mr. Sushant Tripathi,
legal assistant. (M:8178237189)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned orders dated 16th February, 2019 and 5th July, 2019 by which the evidence of the Petitioner was closed by the Ld. Trial Court and the application for recall of the said order was also dismissed.

2. The background is that the Hon'ble Supreme Court vide order dated 21st September, 2017 had remitted the matter to the High Court, which would, thereafter, permit the parties to adduce evidence before the Reference Court and call for a finding from the Reference Court. The operative portion of the order of the Supreme Court is set out herein below:

“5. It was submitted by learned counsel appearing for

the parties that it would be appropriate to permit the parties to adduce additional evidence. The High Court may permit the parties to adduce the evidence before the Reference Court and call for the finding of the Reference Court.

6. The circle rates for purpose of stamp duty could not have been made the basis for determining the market value. Resultantly, we set aside the judgment passed by the High Court. The appeals are allowed and the matters are remitted to the High Court for deciding afresh.”

3. Subsequently, vide order dated 13th November, 2017 a ld. Single Judge of this Court in LA. APP 358/2014 directed as under:

“1. The appellants have challenged the judgments of the Reference Court whereby the compensation has been enhanced.

2. This Court dismissed the appeals vide order dated 16th October, 2014 against which the appellant preferred Special Leave Petitions.

3. The Supreme Court vide judgment dated 21st September, 2017 allowed the appeals and remitted the matter back to this Court for permitting the parties to adduce evidence before the Reference Court and call for a finding from the Reference Court.

4. Relevant portion of the judgment dated 21st September, 2017 is reproduced hereunder:

"5. ...The High Court may permit the parties to adduce the evidence before the Reference Court and call for the finding of the Reference Court.

6. The circle rates for purpose of stamp-duty could not have been made the basis for determining the market value. Resultantly, we set aside the judgment passed by the High Court. The appeals are allowed and the matters are remitted to the High Court for deciding afresh.”

5. Learned counsels for the parties submit that the

impugned judgments of the Reference Court be set-aside the matters be remanded back to the Reference Court for recording additional evidence of the parties and passing fresh orders.

6. The appeals are allowed and the impugned judgments of the Reference Court are set aside and the matters are remanded back to the Reference Court for recording of the additional evidence and thereafter passing fresh orders.

7. Learned counsel for the appellant submits that the decretal amount has been deposited by respondent no.2 before the Reference Court and the same has been released to the private respondents. The appellant seeks refund of the decretal amount by the private respondents.

8. Learned counsel for the private respondents submit that the private respondents be permitted to retain the decretal amount till the fresh orders are passed by the Reference Court and the private respondents shall furnish sufficient security to the satisfaction of the Reference Court with an undertaking to deposit the amount along with such interest as the Reference Court may direct in the event of the appellant succeeding before the Reference Court. Let an undertaking in this regard along with the sufficient security to the satisfaction of the Reference Court be filed by the private respondents before the Reference Court, within a period of six weeks from today. The learned Reference Court shall not permit the private respondents to lead additional evidence till the undertaking and the security in terms of this order is furnished by the private respondents before the Reference Court. In the event of the failure of the private respondents to file an undertaking and the security within six months, the appellant would be at liberty to initiate execution proceedings for recovery of the decretal amount from the private respondents in accordance with law. The parties shall appear before

the Reference Court on 14th December, 2017. Learned counsels for the parties submit that they have noted down the next date of hearing and no fresh notice for their appearance would be required for appearance before the Reference Court.

9. Pending applications are disposed of.

10. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.”

4. One of the directions in the above order was that the Reference Court would not permit the private Respondents to lead additional evidence till the undertaking and security in terms of the same is furnished by the private Respondents before the Reference Court.

5. Thereafter, a perusal of the order of the Reference Court dated 6th April, 2018 shows that the security was sought to be furnished by the Petitioner of the property bearing No.D-241, Anand Vihar, Delhi-110092. Valuation of the said property was then called for. Simultaneously, the evidence of the Petitioner was also continuing. The Petitioner led evidence of several witnesses including PW-13, PW-14, PW-15 and PW-16. The last witness PW-16 was examined on 7th December, 2018 and was discharged. Thereafter, however, the impugned order dated 16th February, 2019 was passed by the Reference Court to the following effect.

“ No undertaking or security has been filed on behalf of IP Chander Pratap till date in compliance of the order dated 13.11.2017 passed by the Hon'ble High Court in LAC bearing no. 359/2014. Therefore, it is hereby directed that the additional evidence recorded on behalf of the IP Chander Pratap shall not be read in evidence of the IP Chander Pratap.

As the order of the hon'ble High Court dated 13.11.2017 has not been complied till date, PW Sushil Kumar, Sr. Assistant from SBI Anaj Mandi who is

present in the court today, is discharged unexamined today.

As the orders of the Hon'ble High Court dated 13.11.2017 have not been complied despite a large number of opportunities, the opportunity for the IP Chander Pratap to lead the additional evidence is hereby closed.

Adjourned for leading the additional evidence by the respondent, if any on 12.04.2019."

6. As per the above order, the Reference Court was of the opinion that the security in terms of the High Court order was not furnished despite the span of two years having passed, accordingly, the Reference Court terminated the evidence being recorded and closed the additional evidence on behalf of the Petitioner. Thereafter, the application was moved seeking recall of the said order and the said application for recall was also dismissed on 5th July, 2019.

7. Today, Mr. Gaurav Sarin, Id. counsel appearing for the Petitioner submits that the Petitioner has taken several steps including furnishing of immovable property as security. In addition two FDRs for the sum of Rs.36,94,753/- and Rs.4,37,577/- drawn on Bank of India dated 5th November, 2018 and 11th January, 2019 respectively were also prepared. The Petitioner was willing to submit the said FDRs along with the indemnity bond to the Reference Court and on the date when the order was passed closing the evidence, his client got delayed in getting the attestation done, of the indemnity bond. It is further submitted that the Petitioner is an old man of 70 years and hence he reached the Court belatedly. Under these circumstances, it is prayed by Id. counsel for the Petitioner that the Petitioner be permitted to furnish the security and after accepting the

indemnity bond/FDRs, the evidence be permitted to be led and the matter be adjudicated on merits.

8. On the other hand, Id. counsels for the LAC and DMRC submit that the order passed by the High Court is dated 13th November, 2017 and it is contended that three opportunities were given to the Petitioner to furnish the security to the satisfaction of the Court. The Petitioner failed to avail all the said opportunities and kept dragging the matter from time to time. Accordingly, it is submitted by Id. counsels for the Respondents that the evidence has been rightly closed by the Reference Court.

9. A perusal of the impugned orders shows that on the date when the evidence was closed, the indemnity bond and FDRs dated 5th November 2018 and 11th January 2019 were not before the Court. However, there is no doubt that the indemnity bond, which has been placed along with the present petition and undertaking is also attached with the same, were attested on 15th February, 2019. The undertaking clearly mentioned the two FDRs in paragraph 1. Thus, it clearly appears that there has been a delay by the Petitioner but the same cannot be termed as negligence or *malafide*. Initially, the Petitioner had offered the immovable properties as security and thereafter the attempts were made to submit the FDRs as security along with the indemnity bond. The original FDRs, indemnity bond etc., have been shown to the court even today.

10. Taking the above facts and circumstances into consideration, the closure of the evidence in these facts would lead to injustice to the Petitioner whose case was specifically remanded back by the Supreme Court. Accordingly, it is directed that the indemnity bond along with undertaking and FDRs, which have been shown to the Court today, be filed before the

Reference Court which shall after examining the same, record its satisfaction and proceed record evidence of the remaining three witnesses of the Petitioner. The said permission is being granted to the Petitioner subject to payment of Rs.20,000/- as costs, out of which Rs.10,000/- to be paid to ld. counsel for the LAC and Rs.10,000/- to ld. counsel for the DMRC.

11. An objection has been raised that the affidavit has been filed by one Mr. BP Singh, who is claimed to be GPA/SPA holder. However, there is no clarity on this issue. Ld. counsel for the Petitioner submits that the affidavit has been furnished by the father of the Petitioner and the power of attorney in his favour is at page 70 of the paper book, which is GPA of November, 2006. Let the proper copy of the GPA be supplied to ld. counsels for the Respondents.

12. The original indemnity bond and original affidavit as also original FDRs are returned to ld. counsel for the Petitioner. The same shall be furnished before the Reference Court on the next date before the Reference Court. The order closing the evidence of the Petitioner is, accordingly, set aside in the above terms.

13. The petition is allowed in the above terms and all the pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 23, 2019/dk