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

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Judgment delivered on: 19.09.2019

+ C.R.P. 77/2018 & CM APPL. 14952/2018

RAJESH KUMAR SINGH

..... Petitioner

versus

AMAR SINHA

..... Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Avdhesh Kumar Singh, Ms. Harsha, Mr. Abhishek Gupta and Mr. Sujit Kumar, Advocates

For the Respondents: Ms. Savita Malhotra and Mr. Suman Malhotra, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 03.04.2018 whereby the application of the petitioner seeking review of the order dated 13.09.2017, whereby the right of the petitioner to lead defence evidence was closed, was dismissed.

2. Petitioner had filed a suit for specific performance against the respondent seeking specific performance of an alleged agreement to sell. Petitioner claimed to be in possession pursuant to the agreement to sell.

3. Respondent filed his written statements as also counter claim denying the agreement to sell as also seeking possession and damages from the petitioner.

4. The suit filed by the petitioner seeking specific performance was dismissed by the concerned trial court. Petitioner filed an appeal impugning the order dismissing his suit, however unsuccessfully.

5. In the counter claim filed by the respondent, trial court on 16.05.2015 noticed that several adjournments had been sought by the petitioner and accordingly it imposed costs on the petitioner and directed that in case the costs were not paid, the defence of the petitioner in the counter claim would be struck off. At request of the petitioner time was granted for 7 days to deposit the costs.

6. On 24.11.2015, trial court noticed that the petitioner had failed to deposit the cost within one week of the order dated 16.05.2015. Even till 24.11.2015 i.e. after passage of over 6 months, the costs had not been deposited. The trial court accordingly struck off the defence of the petitioner.

7. Petitioner impugned order dated 24.11.2015 whereby his defence had been struck off by filing a revision petition to this Court being CRP No. 99/2016.

8. BY order dated 19.07.2016, this court permitted the petitioner to file a review petition before the trial court subject to payment of

costs. Further additional cost was imposed on the petitioner. It was directed that the petitioner shall not seek any adjournment at any stage in the progress of the counter claim and in case any adjournment was sought, the impugned order striking off of the defence would stand revived. Further the Court directed that in case the orders were complied with the trial court would decide the review application of the petitioner as per law.

9. Subsequent to the said order, petitioner filed a review petition before the trial court which review petition was dismissed by order dated 26.10.2016. It is an admitted position that no further challenge was made to the dismissal of the review petition.

10. When respondent was leading his evidence, petitioner was given an opportunity to cross-examine the respondent and his witnesses. Petitioner availed of that opportunity and cross-examined the witnesses of the respondent.

11. When respondent closed his evidence, petitioner sought time to lead defence evidence. Trial court initially granted an opportunity to the petitioner to lead evidence, however, respondent by subsequent application under Section 114 CPC sought review of the order dated 13.09.2017 whereby the petitioner was permitted to lead defence evidence contending that a defendant whose defence had been struck off, though can cross-examine the witness of the plaintiff cannot lead defence evidence.

12. By the impugned order herein, the trial court allowed the review application filed by the respondent and held that as the defence of the petitioner has been struck off, the petitioner cannot be permitted to lead defence evidence.

13. Reference may be had to the judgment of the Supreme Court in *Modula India Vs. Kamakshya Singh Deo*; A.I.R 1989 SC 162 wherein the Supreme Court has laid down that defendant whose right has been struck off to defend the suit is permitted to cross-examine and address arguments but the same is subject to certain safeguards. The defendant cannot be allowed to lead his own evidence and even if right to cross-examine is permitted, the same would not travel beyond the limited scope of pointing out the falsity or weaknesses of the plaintiff's case and no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.

14. Clearly, there is no infirmity in the view taken by the trial court, in the impugned order dated 03.04.2018, in holding that the petitioner cannot be permitted to lead its evidence.

15. Further, there is no merit in the contention of the learned counsel for the petitioner that defence of the petitioner in fact had been restored by the order dated 19.07.2016 in CRP No. 99/2016. It is observed that the said order was passed in the earlier revision petition

without notice to the respondent and further the order only permitted the petitioner to file a review petition. The review petition was filed, however, the same was dismissed by order dated 26.10.2016 and there was no further challenge by the petitioner to the said order.

16. It is observed that in the present case, the petitioner apart from impugning the order dated 03.04.2018 in the prayer also seeks to challenge order dated 26.10.2018 whereby review petition was earlier dismissed and order dated 16.05.2015 whereby costs were imposed and it was directed on his failure the defence would be liable to strike off. The petitioner at this late juncture cannot be permitted to challenge orders dated 16.05.2015 and 26.10.2016. It is further noticed that defence of the petitioner had been strike off by order dated 24.11.2015, which is not impugned.

17. I find no infirmity in the view taken by the trial court in declining the petitioner a right to lead affirmative evidence.

18. The Petition has no merit and is accordingly dismissed.

19. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 19, 2019

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