

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 6th November, 2019
+ **CM (M) 1296/2018 and CM APPL. 44635/2018**
ZILE SINGH Petitioner
Through: Mr. Anuj Kumar Garg, Advocate (M:
999310742).
versus
SANTOSH @ SANTRA & ORS Respondents
Through: Mr. Mohit Chadha, Advocate (M:
9999184123).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the order dated 9th August, 2018 by which the evidence of PW-4 has been directed to not be read and the evidence of Mr. Yashvir Singh, who was present from the Delhi Jal Board (*hereinafter*, “*DJB*”), was not recorded on the ground that the list of witnesses was not filed.
2. Ld. counsel for the Petitioner/Plaintiff (*hereinafter*, “*Plaintiff*”) submits that in the examination-in-chief of PW-4 there was a mistake while recording the examination as no affidavit was filed by PW-4 - Mr. Rajbir, who was only an attesting witness to some of the documents. The affidavit – Ex.PW4/A was wrongly exhibited in the examination-in-chief, which was an error by the Plaintiff. However, it is submitted that PW-4 is an important witness, who is an attesting witness in all the documents and has exhibited the same as Ex.PW1/5, Ex.PW1/6, Ex.PW1/8, Ex.PW1/9, Ex.PW1/10. Accordingly, it is urged that his evidence ought to be read. It is further submitted that although the list of witnesses was inadvertently not filed, all the witnesses have been summoned by the Plaintiff and thus, their evidence

ought to have been recorded by the Id. Trial Court.

3. Id. counsel for the Respondents/Defendants (*hereinafter*, “*Defendants*”) submits that the approach of the Plaintiff has been extremely casual. A perusal of the examination-in-chief shows that PW-4 had not filed any affidavit, however, the same was sought to be exhibited as PW4/A. It was under these circumstances that the Defendants had not received any copy of the affidavit and hence, the Id. Trial Court had directed that the evidence of PW-4 would not be read. Insofar as the witness from DJB is concerned, the Defendants had no notice of his appearance, inasmuch as no list of witnesses had been filed by the Plaintiff.

4. In rejoinder, Id. counsel for the Plaintiff submits that the witness from the DJB was present on the previous hearing and thus, the Defendants had adequate notice of his evidence being tendered by the Plaintiff.

5. This Court has perused the various orders passed by the Id. Trial Court. The first mistake is that on 11th July, 2018, when the statement of PW-4 was recorded, an affidavit was sought to be exhibited as PW4/A which did not even exist in the judicial file. The evidence ought to be recorded in a proper manner and not in a casual and mechanical manner, as appears to have been done in the present case. On 11th July, 2018, the Court could not have permitted the examination-in-chief to state that the affidavit is exhibited as PW4/A and the signatures are at point A and B. The fact that the affidavit was not even on record, proves that these statements have been recorded in a completely unverified and mechanical manner. Recordal of evidence being a crucial procedure in the adjudication of a case, the same ought to be done with due diligence. The Plaintiff, as well as the Court, ought to have verified if there was an affidavit.

6. The examination-in-chief of PW-4 reads as under: -

“I tender my evidence by way of affidavit which is Ex.PW4/A bear my signatures at point A and B. The documents Ex.PW1/5, Ex.PW1/6, Ex.PW1/8, Ex.PW1/9, Ex.PW1/10 bears my signature at point A respectively and I taken thereof as witness of those documents. The documents Ex.PW1/5, Ex.PW1/6, Ex.PW1/8, Ex.PW1/9. Ex.PW1/10 bears the signature and thumb impression of Sh. Jagdish Prasad at point B and C respectively.”

7. A perusal of the above examination-in-chief shows that the said PW-4, apart from exhibiting a non-existing affidavit, exhibited various documents, namely Ex.PW1/5, Ex.PW1/6, Ex.PW1/8, Ex.PW1/9, Ex.PW1/10, and also pointed out his signatures on those documents.

8. Thus, the examination-in-chief having been concluded, the Defendants had adequate notice of the documents which the witness was to prove. Thus, the cross-examination of this witness ought to have been permitted to be conducted.

9. Insofar as the other witness present from the DJB is concerned, he was, in fact, present on 11th July, 2018 which is clear from the order sheet of the said date and hence, his evidence also ought to have been recorded by the Id. Trial Court. Once witnesses are summoned and are present before the Court, with notice to the opposite party, the usual procedure ought to be to record their evidence rather than sending them back.

10. While the filing of the list of witnesses is absolutely essential in a civil suit, the same ought to have been verified prior to fixing the matter for the Plaintiff's and Defendants' evidence. Once the evidence commences and witnesses are present, the verification of the list of witnesses is not to be

done at that stage. Considering the overall facts and circumstances and after hearing the ld. counsels for the parties, the Plaintiff is permitted to produce PW-4, PW-5 and PW-6 for tendering of their oral evidence. Ld. counsel for the Plaintiff submits that he would file the affidavit in evidence within two weeks. Let an advance copy of the same be served to the ld. counsel for the Defendants. Ld. counsel for the Defendants submits that there is no need to summon any official from the sub-registrar's office as the registration of the documents which are relied upon by the Plaintiff are not being disputed by the Defendants. Accordingly, the three witnesses shall be examined and cross-examined before the ld. Trial Court, subject to payment of Rs. 10,000/- as costs by the Plaintiff to the Defendants in equal share.

11. No further opportunity shall be granted to the Plaintiff to lead any evidence and no further witnesses would be permitted on behalf of the Plaintiff. After conclusion of Plaintiff's evidence, the Defendants' evidence shall commence.

12. The three witnesses, i.e., PW-4, PW-5 and PW-6, shall be summoned on two dates and the cross-examination shall be conducted in the two dates before the ld. Trial Court. Costs shall be paid on or before the next date before the ld. Trial Court.

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

Directions:

14. Considering the manner in which evidence has been recorded in this matter, wherein a non-existent affidavit was sought to be exhibited, the following directions are issued to the trial courts:

- i. Prior to listing a case for PE, the court shall ensure that the list of

witnesses by all the parties is on record. The court would have the power to prune the list of witnesses so as to ensure that unnecessary burden is not put on the Registry in preparing summons and only those witnesses whose oral evidence is necessary shall be summoned;

- ii. Prior to recording the examination in chief, the judicial file shall be seen to confirm that the affidavit in evidence is on record. All the documents which the witness seeks to exhibit shall be examined and either exhibited or marked. Only thereafter the cross examination would commence.
 - iii. If the witness is a summoned witness and no affidavit in evidence is filed, then the examination in chief shall be recorded, the documents (either in original or copy) shall be exhibited or marked and thereafter cross examination would commence. The order for the day would reflect if originals, certified copies or if copies are being exhibited/marked – whether originals were seen and returned. On the copy the remark OSR shall be given with the signature of the Presiding officer.
 - iv. If any documents are confronted during cross examination, the above procedure would be followed in respect of the said documents as well.
15. Copy of this order be circulated to all the District Judges for onward transmission to all the Presiding officers, by the worthy Registrar General of this Court.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 06, 2019/MR