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

+ **CM (M) 24/2019 & CM APPL. 710/2019**

MOHD AQIL & ANR.

..... Petitioners

Through: Mr. Absar Ahmad, Advocate with
Petitioner No.2 in person.
(M:9811364326)

versus

MOHD FAROOQ & ORS.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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30.01.2020

1. The present petition has been filed on behalf of the Petitioners/Plaintiffs - Mohd. Aqil and Mst. Shabnam Bano. However, Mohd. Aqil has passed away during the pendency of this petition. It is stated that the LRs of Mohd. Aqil have not engaged the counsel appearing today. Ld Counsel thus submits that the present petition may be treated as a petition only on behalf of Mst. Shabnam Bano i.e., Petitioner No.2/Plaintiff No.2 (*hereinafter 'Plaintiff No.2'*).

2. The Respondents/Defendants (*hereinafter 'Defendants'*) have been served and have appeared earlier. However, none appears for the Defendants today.

3. The present petition challenges the impugned order dated 13th December, 2018, which rejected the prayer for recall of order dated 25th October, 2017 - in effect closing the right of the Petitioners/Plaintiffs to lead evidence in the matter.

4. Plaintiff No.1 and No.2 i.e. Mohd. Aqil and Mst. Shabnam Bano respectively are brother and sister. They had filed a suit under Section 31 of the Specific Relief Act, 1963 for cancelation of sale deed dated 17th February, 2011 and Will dated 15th February, 2000. They claim rights in property bearing No.727, Sheesh Mahal, Sadar Bazar, Azad Market, Delhi. Written statement was filed by the Defendants. Issues were framed and the matter had proceeded to evidence.

5. On 25th October, 2017, the Trial Court had closed the right of the Plaintiffs to lead evidence. On the said date, the affidavit in evidence of Plaintiff No.2 - PW-2 was on record. However, in view of the fact that PW-2 was not present, the evidence was closed. Plaintiff No.2 then sought recall of the said order by moving an appropriate application. The grounds for recall was that the Plaintiff No.2 is a *pardanashin* lady and her husband had been bed-ridden since 2013. The Trial Court, however, refused to recall the said order. The Defendants' evidence was also closed on the same very day and the matter is now pending for final arguments.

6. Ld. counsel for Plaintiff No.2 submits that the facts on record would show that the Plaintiff No.2 had filed the affidavit in evidence but could not appear due to illness of her husband.

7. The Court has considered the two orders as also the pleadings on record. From the perusal of the same it is clear that Plaintiff No.2, who appeared as PW-2 before the Trial Court, had filed the affidavit in evidence way back on 25th October, 2017. On the date when the evidence was closed, since her affidavit was on record, and also considering the fact that she is a *pardanashin* lady, whose husband is bedridden, this Court is of the view that one opportunity ought to be granted to her to lead evidence.

8. Accordingly, subject to payment of Rs.5,000/- as costs to be paid to the Defendants, the Plaintiff No.2 is permitted to lead her evidence on the next date fixed before the Trial Court. If she does not appear on the said date, the opportunity to lead evidence shall automatically stand closed. No further opportunity shall be granted.

9. Considering that today the Court has allowed Plaintiff No.2 to lead evidence and that the Defendants' evidence was closed as the Defendant had made a statement that in view of the Plaintiffs having not led evidence, the Defendant does not wish to lead evidence, if the Defendants seek to lead evidence in the matter, the Trial Court shall permit the same. The date for appearance of the Plaintiff No.2 as PW-2 shall be fixed by the Trial Court.

10. With these observations, the petition along with the pending application is disposed of.

PRATHIBA M. SINGH, J.

JANUARY 30, 2020/dk